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	3 ,,		
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		0 1 6	
[Continued at End.]			

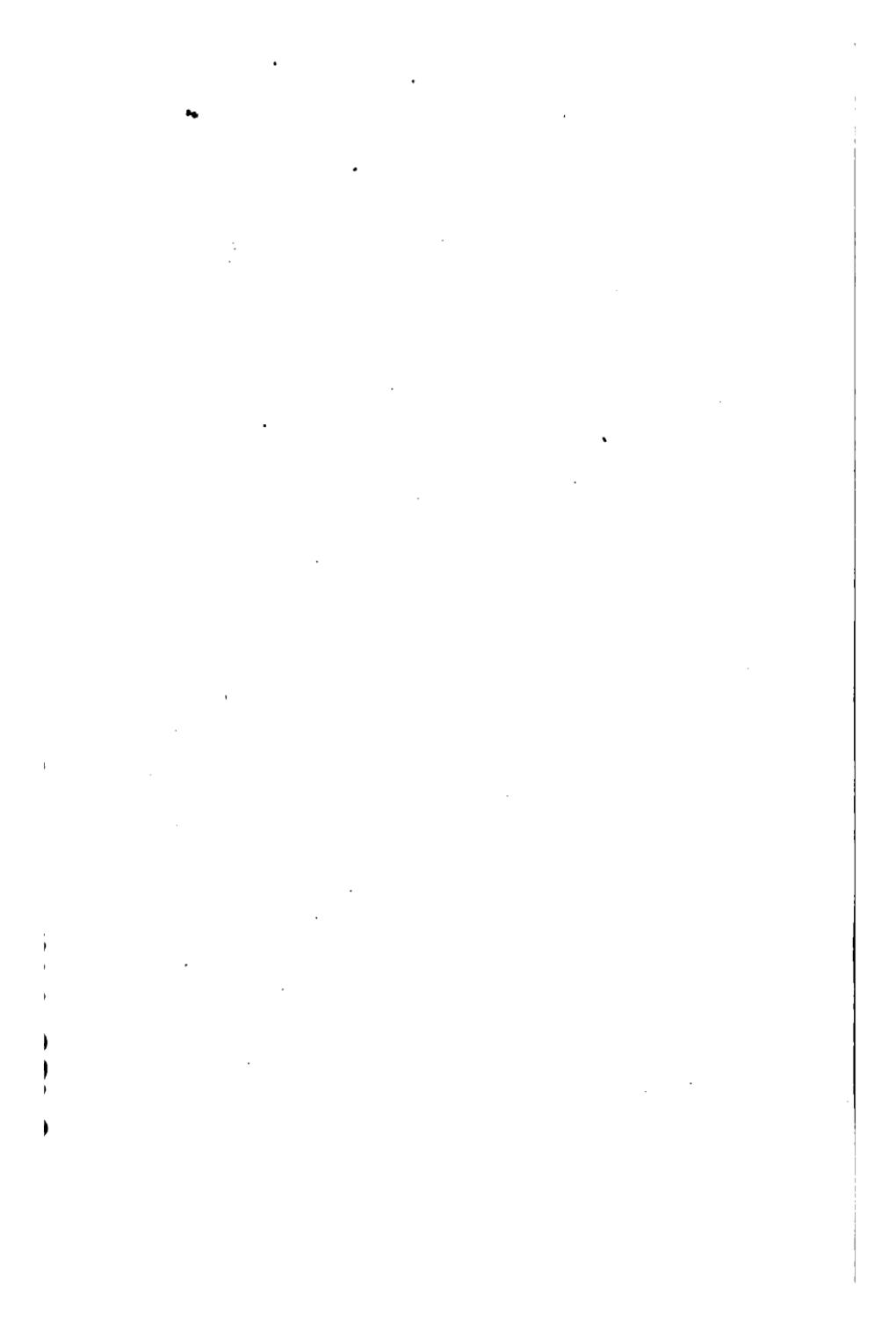
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THE HIGHWAY ACTS.



THE ACTS
FOR
THE BETTER MANAGEMENT
OF THE
Highways in England,
1862—1864,
AND THE PROVISIONS OF THE
TURNPIKE ACTS
RELATING TO HIGHWAYS, AND THE WINDING-UP OF
TURNPIKE TRUSTS.

WITH

INTRODUCTION, NOTES, AND INDEX.

Fourth Edition.

BY

ALEXANDER GLEN, M.A., LL.B., CANTAB.,
BARRISTER-AT-LAW.

LONDON:
KNIGHT AND CO., 90, FLEET STREET.

1875.

P R E F A C E.

THIS work was formerly edited by my father, Mr. WILLIAM CUNNINGHAM GLEN, Barrister-at-Law; and in preparing a fourth edition for the press, I have availed myself of his notes to the previous editions, making such alterations as I deemed necessary, and adding further notes, including those decisions of the Courts, subsequent to the publication of the last edition, which bear directly upon the Highway Acts of 1862 and 1864.

The Introduction, as before, is arranged in sections, which bring together the whole of the law on each particular subject; and it traces the mode in which the Acts are to be adopted, the machinery by which they are to be carried into execution, and the various duties and functions of Highway Boards and their officers. In the latter portion of the work will be found all the general provisions of the Turnpike Acts, 1865-1874, relating to Highways, and the winding-up of Turnpike

Trusts. The incorporated clauses of the Commissioners' Clauses Act, 1847, and of the Common Law Procedure Act, 1854, are appended.

I trust that the present edition will be received with the same favour as the three which have preceded it, and that it will prove as useful a handy-book in affording to those who have the management of Highways an exposition of their powers and duties under the Acts of 1862 and 1864, and the general Turnpike Acts above mentioned.

ALEXANDER GLEN.

*5, Elm Court, Temple,
June, 1875.*

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THE HIGHWAY ACTS,

1862 TO 1874.

INTRODUCTION.

I. FORMATION AND ALTERATION OF HIGHWAY DISTRICTS.

Provisional Orders forming Districts.

ANY five or more justices of a county may by writing under their hands require the Clerk of the Peace to add to or send with the notice for holding courts of general or quarter sessions a notice that at the court a proposal will be made to the justices to divide the county or some part of it into highway districts, or to constitute the whole or some part of it a highway district. The justices may also require the Clerk of the Peace to send by post in a pre-paid letter notices to the churchwardens or overseers of the several parishes proposed to be formed into a highway district. Upon the requisition being complied with, the justices at the quarter sessions may entertain the proposal, and make a provisional order dividing the county or some part of it into highway districts, or constituting the whole or some part of it a highway district, for the more convenient management of highways. Such order, however, shall not be of any validity unless it is confirmed by a final order of the justices assembled at some subsequent court of general or quarter sessions. (a) When it is proposed that only a part of a county shall be constituted a highway district, not less than two out of the five justices making the proposal shall be resident in the district, or acting in the petty sessional division in which the district or some part of it is situate. (b)

(a) 25 & 26 Vict. c. 61, s. 5.

(b) 27 & 28 Vict. c. 101, s. 6.

Making, Confirmation, and Approval of Orders.

The following are the regulations as to the making, confirmation, and approval of the orders of justices for forming highway districts :—

1. The justices making a provisional order shall appoint some subsequent court of general or quarter sessions, to be held within a period of not more than six months, for the taking into consideration the confirmation of the provisional order by a final order :
2. The Clerk of the Peace shall add to or send with the notice for holding of courts of general or quarter sessions a notice of the appointments so made by the justices in relation to the confirmation of the provisional order :
3. The justices assembled at the appointed court of general or quarter sessions may make a further order quashing the provisional order, or confirming it with or without variations, or respiting the consideration of it to some subsequent court of general or quarter sessions, provided,—

Firstly, that where the variations made extend to altering the parishes constituting any highway district or districts as formed in the provisional order, the order shall be deemed to be provisional only, and shall be dealt with accordingly :

Secondly, that where a respite is made to any subsequent general or quarter sessions, the Clerk of the Peace shall give notice of such respite in the manner in which he is required to give notice in respect of sessions at which a provisional or final order is proposed to be made :

4. The provisional order shall state the parishes to be united in each district, the name by which the district is to be known, and the number of waywardens (such number to be at least one) which each parish is to elect : (c)
5. The first meeting of the Highway Board after the formation of a district shall be held at such time as may be appointed by the provisional or final order of the justices, so that the time appointed be not more

than seven days after the expiration of the time limited by law for the election of waywardens, or, in the case of a special day being appointed for such election, be not more than twenty-one days after that day. The day appointed for the first meeting of the Board shall for all the purposes of the Highway Acts be deemed to be the day of the formation of the district ; and the surveyor for the time being of every parish within the district shall continue in office until seven days after the appointment of the district surveyor, and no longer. (*d*)

6. Notice of the provisional and final orders shall as soon as possible after the making thereof be given by the Clerk of the Peace by publishing a copy in the *London Gazette*, and in one or more newspapers circulating in the county, or if the whole county is not affected by the order, in one or more newspapers circulating in the district affected by the orders, and by sending a copy by post in a prepaid letter to the overseers of every parish within the proposed highway district. There shall also be added to the notice of the provisional order the date of the sessions at which the confirmation of it will be considered : (*e*)

But the order shall not be invalidated by reason of its not being published in the *London Gazette*; and where any reference is made in the "Highway Act, 1862," to the date of the publication in the *Gazette* of the order, it shall be construed as if the date of the making of the final order under which the district is formed were substituted for "the date of the publication in the *Gazette* of the order under which the district is formed;" and any copy of the provisional or final order of the justices forming a highway district, certified under the hand of the Clerk of the Peace to be a true copy, shall be receivable in all courts of justice and in all legal proceedings as evidence of the formation of the district and of the matters in the order mentioned. (*f*)

In forming a highway district the justices may, for the purpose of avoiding delay in bringing the Act into opera-

(*d*) 27 & 28 Vict. c. 101, s. 10. (*e*) 25 & 26 Vict. c. 61, s. 6.

(*f*) 27 & 28 Vict. c. 101, s. 12.

tion, appoint by their final order a day on which the first election of waywardens as members of the Highway Board is to take place in the district. On the day so appointed waywardens shall be elected in every parish in the district entitled to elect such officers by the same persons and in the same manner by and in which waywardens are elected under the "Highway Act, 1862," and all the provisions of the Highway Acts relating to the qualifications of surveyors or waywardens, and to the appointment of surveyors and waywardens by justices in the event of no election taking place, shall apply accordingly; but the waywardens so elected shall continue in office only until the time at which the next annual election of surveyors would have taken place in the several parishes of the district if the same had not been constituted a highway district, and at that time new waywardens shall be elected in manner provided by the Highway Acts. (g)

Extra-parochial Places.

Where, in pursuance of the Act 20 Vict. c. 19, for the relief of the poor in extra-parochial places, any place is declared to be a parish, or where overseers of the poor are appointed for any place, such place shall for the purposes of the Act be deemed to be a parish separately maintaining its own highways; and where, in pursuance of ss. 4 or 8 of the 20th Vict. c. 19, any place is annexed to any adjoining parish, or to any district in which the relief of the poor is administered under a local Act, such place shall for the purposes of the Act be deemed to be annexed to the same parish or district for the purposes of the maintenance of the highways, as well as for the other purposes in the Act mentioned. (h)

The justices in petty sessions may appoint overseers, or otherwise deal with any extra-parochial place with a view to constituting it a highway parish or part of a highway parish, in the same manner as the justices may deal with such place for the purpose of constituting it a place or part of a place maintaining its own poor, in pursuance of the powers for that purpose given by the 20 Vict. c. 19. (i)

(g) 27 & 28 Vict. c. 101, s. 11. (h) 25 & 26 Vict. c. 61, s. 32.

(i) 27 & 28 Vict. c. 101, s. 9.

Outlying Parts of Parishes, and Union of Parishes in different Counties.

Again, where part of a parish is not contiguous to the parish of which it is part, the outlying part may at the discretion of the justices be annexed to a district, and, when annexed, it shall, for all the purposes of the Highway Acts, be deemed to be a parish separately maintaining its own highways. (j)

Contiguous places situate in different counties and places situate partly in one county and partly in another county or counties shall, for the purpose of being united in one highway district, be deemed to be subject to the jurisdiction of the justices of any county, who may make a provisional and final order constituting them a highway district, in the same manner as if all such places or parts of places were situate in such last-mentioned county; subject to this proviso, that the provisional and final orders of the justices of the county shall be of no validity unless provisional and final orders to the same effect are passed either concurrently with or subsequently to the first-mentioned provisional and final orders by the justices of every other county in which any of the said places or parts of places are situate. (k)

Alteration or Dissolution of Highway Districts.

Any highway district formed under the Act may from time to time be altered by the addition of any parishes in the same or in any adjoining county, or the subtraction therefrom of any parishes, and new highway districts may be formed by the union of any existing highway districts in the same or in any adjoining county, or any parishes forming part of any existing highway districts, or any highway district may be dissolved. Any such alteration of existing districts, or formation of new districts, or dissolution of any district, shall be made by provisional and final orders of the justices; and all the provisions of the Act with respect to the formation of highway districts and provisional and final orders of justices, and the notices to be given of and previously to the making of such orders, and all other proceedings relating to the formation of highway

(j) 25 & 26 Vict. c. 61, s. 33.

(k) 27 & 28 Vict. c. 101, s. 13.

districts, shall, in so far as the same are applicable, extend to such alteration of existing or formation of new districts, or dissolution of districts. In addition, provision shall be made, if necessary, in any orders of justices so made for the adjustment of any matters of account arising between parishes or parts of districts in consequence of the exercise of these powers. Where any parish is added to or any district united with any district in another county, the final order of the justices of the county in which the parish or district is situate shall not be confirmed by them until they shall have received the approval of their provisional order for the addition or union from the justices of the county in which the district is situate to or with which the addition or union is to be made. Where any highway district is dissolved, or where any parish is excluded from any highway district, the highways in the district or parish shall be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to such highways, in the same manner as if they had never been included within the limits of a highway district. (*l*)

The approval of the justices of any county to any provisional order made by the justices of another county affecting any place in such first-mentioned county, in pursuance of the thirty-ninth section of the "Highway Act, 1862," shall be testified by provisional and final orders of the justices of the first-mentioned county; and the powers conferred on justices by the thirty-ninth section of the "Highway Act, 1862," shall be deemed to extend to the separation of any townships, tithings, hamlets, or places separately maintaining their own highways which may have been consolidated by any previous order of the justices, and to an alteration in the number of waywardens of any parish. (*m*)

Where after the formation of a highway district, an application is made by any parish in that district to any court of general or quarter sessions, praying that the parish may be removed from that district, all costs incidental to or consequential on such application and the removal of the parish shall, unless the court otherwise directs, be paid by the parish that has made the application in such manner as the

(*l*) 25 & 26 Vict. c. 61, s. 39.

(*m*) 27 & 28 Vict. c. 101, s. 14.

said court may direct. The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the highways of that parish. (n)

By the Amending Act, where more highway districts than one are comprised in any order of justices, whether provisional or final, and whether made before or after the passing of the 27 & 28 Vict. c. 101, the formation of each of such districts is to be deemed independent of the formation of any other district, and the order shall for all purposes be construed and take effect as if a separate order had been made in respect of each district; any variation in a provisional order altering the parishes in any one or more districts comprised in that order shall make that order provisional only as to the particular district or districts in which the alterations are made, and not as to any other district or districts included in the same order. (o)

Extent of Powers of Justices.

All powers and jurisdictions vested in justices by the "Highway Acts, 1862 and 1864," may from time to time be exercised in relation to highway districts, highway boards, and highway parishes already formed, as well as upon the occasion of forming new highway districts, boards, or parishes; and where an alteration is made in part only of a highway district, the residue of that district shall not be affected thereby, but shall continue subject to the Highway Acts in the same manner as if no such alteration had been made.(p)

Adoption of Local Government Act after formation of Highway District.

Any parish or part of a parish included in a highway district may adopt the Local Government Act in the same manner and under the same circumstances in and under which it might have adopted that Act if it had not been included in the district. Upon such adoption being made, the parish or part of a parish shall cease to form part of the district, subject nevertheless to the payment of any contribution that may at the time of the adoption be due from the parish or part of a parish to the Highway Board. (q)

(n) 27 & 28 Vict. c. 101, s. 15. (o) Ibid. s. 4. (p) Ibid. s. 17.
(q) 25 & 26 Vict. c. 61, s. 41.

Restrictions as to Adoption of Act.

The following restrictions are imposed with respect to the formation of highway districts:

Firstly, there shall not be included in any highway district any of the following places:—

Any part of a county to which the Act for the better Management and Control of the Highways in South Wales extends; the Isle of Wight; any district constituted under the Public Health Act, 1848, or the Local Government Act, 1858; any parish or place the highways of which are, on the 29th July, 1862, or may be within six months afterwards, under the superintendence of a Highway Board established under s. 18 of the 5 & 6 Wm. IV. c. 50, unless with the consent of such Board; any parish or place within the limits of the metropolis; any parish or place, or part of a parish or place, the highways whereof are maintained under the provisions of any local Act of Parliament.

Secondly, there shall not be included in any highway district any parish or place or part of a parish or place within the limits of a borough without the consent, firstly, of the council of the borough, and, secondly, of the vestry of the parish which, or part of which, is proposed to be included.

Thirdly, where any parish separately maintaining its own highways is situate in more than one county, the whole of such parish shall, for the purposes of the Act, be deemed to be within the county within which the church of such parish, or (if there be no church) the greater part of it is situated.

Lastly, where a parish separately maintaining its own poor is divided into townships, tithings, hamlets, or places, each of which separately maintains its own highways, the justices may, if they think fit, in their provisional order, combine such townships, tithings, hamlets, and places, and declare that no separate waywardens shall be elected for them, and that such parish shall be subject to the same liabilities in respect of all the high-

ways within it which were before maintained by the townships, tithings, hamlets, and places separately, as if all their several liabilities had attached to the whole parish; and a waywarden or waywardens shall be elected for such parish as a whole; and where the order is made, all the provisions of the Act in relation to parishes maintaining their own highways shall be applicable to the parish formed by such combination. (r)

And this power shall extend to combining any two or more of such townships, tithings, hamlets, or places, and any combination so formed shall for all the purposes of the Highway Acts be deemed to be a highway parish. Again, where a township, tithing, hamlet, or other place separately maintaining its own highways is situate in two or more poor law parishes, each part of such township, tithing, hamlet, or other place may be combined with the parish in which that part is situate. (s)

The justices may, by their provisional and final order, declare that any poor law parish within their jurisdiction, or residue thereof, after excluding such part, if any, as is prohibited by the "Highway Act, 1862," either wholly or without the consent of the governing body, from being included in the highway district, shall henceforward become a highway parish; and upon such declaration being made such poor law parish, or residue, shall thereafter be a highway parish entitled to return a waywarden or waywardens to the Highway Board of the district in which it is included; and no rate shall be separately levied for the maintenance of the highways, and no separate waywardens be elected in any such township, &c. (t)

Where, previously to the passing of the provisional order forming a highway district, no surveyors or waywardens have been elected within any highway parish in that district, and where the mode of electing a waywarden or waywardens in such parish is not provided by the "Highway Acts, 1862 or 1864," the justices shall, by their provisional and final orders constituting the district, or by any subsequent provisional and final orders, make provi-

(r) 25 & 26 Vict. c. 61, s. 7. (s) 27 & 28 Vict. c. 101, s. 7.

(t) Ibid. s. 7.

sions for the annual election of a waywarden or waywardens for such parish. (*u*)

Where a parish or place separately maintaining its own highways is situate partly within and partly without the limits of a borough, the justices may by their provisional and final orders include in a highway district the outlying part of such parish or place; and where the outlying part of a parish or place so situate has been, or may be hereafter, included in a highway district, each part of such parish or place shall for all the purposes of the Highway Acts be deemed to be a place separately maintaining its own highways; and a waywarden or waywardens shall be elected by the ratepayers in each such part at such time and in such manner as may be provided by the justices. (*v*)

Legal Objections to Formation of District.

No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the formation of a highway district, after the expiration of three calendar months from the date of the publication in the *Gazette* of the order under which the district is formed; and the production of a copy of the *London Gazette*, containing a copy of the order of justices forming the district, shall be receivable in all courts of justice, and in all legal proceedings, as evidence of the formation of the district and of the matters in the order mentioned. (*x*) But see 27 & 28 Vict. c. 101, s. 12, *ante*, p. 3.

Validity of Order of Justices.

No order of justices forming a highway district shall be void by reason that it includes in the district a place which the justices are not entitled to include in the district; and any order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county. (*y*)

(*u*) 27 & 28 Vict. c. 101, s. 7. (*v*) *Ibid.* s. 8.

(*x*) 25 & 26 Vict. c. 61, s. 8. (*y*) 27 & 28 Vict. c. 101, s. 16.

2. CONSEQUENCES OF FORMATION OF HIGHWAY DISTRICT.

Transfer of Property, Powers, &c.

At and after the first meeting of the Highway Board the following consequences shall ensue:—

All such property, real and personal, including all interests, easements, and rights in, to, and out of property, real and personal, and including things in action, as belong to or are vested in, or would but for the Act have belonged to or been vested in, any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the Highway Board of the district for all the estate and interest of such surveyor or surveyors, but subject to all debts and liabilities affecting the same:

All debts and liabilities incurred in respect of any property transferred to the Highway Board may be enforced against the Board to the extent of the property transferred:

All such powers, rights, duties, liabilities, capacities, and incapacities (except the power of making, assessing, and levying highway rates), as are vested in or attached to, or would but for the Act have become vested in or attached to, any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the Highway Board:

All property by the Act transferred to the Board shall be held by them upon trust for the several parishes or places maintaining their own highways within their district to which such property belongs, or for the benefit of which it was held previously to the formation of the district. (z)

3. THE HIGHWAY BOARD.

Constitution of Highway Board.

The Highway Board shall consist of the waywardens elected in the several places within the district, in manner hereafter mentioned, and of the justices acting for the county and residing within the district. (a)

(s) 25 & 26 Vict. c. 61, s. 11.

(a) Ibid. s. 9.

A justice of the peace acting for the county in which a highway district is situate, if he is resident in any place which is prohibited either altogether or without the consent of the local authority from being included in a highway district by the seventh section of the "Highway Act of 1862," and which is surrounded by or adjoins in any part such highway district, shall, by virtue of his office, be a member of the Highway Board of such district, subject to this qualification, that if any justice of the peace would be so entitled to be a member of two or more Highway Boards in the same county, he shall, by letter under his hand, addressed to the Clerk of the Highway Board for which he elects to act, and by him to be transmitted to the Clerk of the Peace of the county, declare of which of the Highway Boards he elects to be a member, and having made that election he shall be bound thereby, and shall not be entitled by virtue of his office of justice to be a member of any other of the said Boards. (b)

The Board shall be a body corporate, by the name of the Highway Board of the district to which it belongs, having a perpetual succession and a common seal, with power to acquire and hold lands for the purposes of the Highway Acts, without any licence in mortmain. (c)

No act or proceeding of the Board shall be questioned on account of any vacancy or vacancies in their body; and no defect in the qualification or election of any person or persons acting as member or members of the Board or Committee of a Board shall vitiate any proceedings of the Board in which he or they have taken part, in cases where the majority of members parties to the proceedings are duly entitled to act. (c)

Minutes of their Proceedings to be received in Evidence.

Any minute made of proceedings at meetings of the Board or of Committees of the Board, if signed by any person purporting to be the chairman of the Board or Committee, either at the meeting of the Board or Committee of the Board at which the proceedings took place, or at the next ensuing meeting of the Board or Committee, shall be receivable in evidence in all legal proceedings without

(b) 27 & 28 Vict. c. 101, s. 29.

(c) 25 & 26 Vict. c. 61, s. 9.

further proof; and until the contrary is proved every meeting of the Board or Committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified. (*d*)

Liability of Members of Board.

No member of a board, by being party to, or executing in his capacity of member, any contract or other instrument on behalf of the Board, or otherwise lawfully exercising any of the powers given to the Board, shall be subject to be tried or prosecuted, either individually or with others, by any person whomsoever; and the bodies or goods or lands of the members shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, tried, or executed by them, or by reason of any other lawful act done by them in execution of any of the powers of the Board; and the members of the Board may apply any moneys in their hands for the purpose of indemnifying themselves against any losses, costs, or damages they may incur in execution of the powers granted to them. (*d*)

4. PROCEEDINGS OF HIGHWAY BOARDS.

Their Meetings.

The Board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the Board, as they think fit, subject to the following conditions. The first meeting after the formation of the district shall be held at the time and place fixed by the order of the justices in that behalf. (*e*)

If any Highway Board make default in holding its first meeting, the Board shall not thereupon become disqualified from acting, but the justices in general or quarter sessions shall, on the application of any person liable to pay high-

(*d*) 25 & 26 Vict. c. 61, s. 9.

(*e*) 27 & 28 Vict. c. 101, s. 27 and sch. I.

way rates within the district, make such order as they think fit for the holding of the Board at some other time. Any order so made shall be deemed to be an order capable of being removed into the Court of Queen's Bench, in pursuance of the 12 and 13 Vict. c. 45, and may be enforced accordingly. The costs of any such application to the Court of Quarter Sessions shall be defrayed out of the district fund of the Board. (f)

One ordinary meeting shall be held in each period of four months, and of such meetings one shall be held on some day between the seventh and fourteenth days of April. An extraordinary meeting may be summoned at any time, on the requisition of three members of the Board, addressed to the Clerk of the Board. (g)

Quorum and Voting at Meetings.

The quorum to be fixed by the Board shall consist of not less than three members. Every question shall be decided by a majority of votes of the members voting on that question. The names of the members present at a meeting shall be recorded. (g)

In case of an equality of votes at any meeting the chairman for the time being of such meeting shall have a second or casting vote. (g)

Chairman and Vice-Chairman.

The Board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the Board as hereafter mentioned, appoint one of their members to be chairman and one other of their members to be a vice-chairman for the year following such choice. (g)

If any casual vacancy occur in the office of chairman or vice-chairman, the Board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy; and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose

(f) 25 & 26 Vict. c. 61, s. 40.

(g) 27 & 28 Vict. c. 101, s. 27 and sch. I.

place he may be so elected would have been entitled to continue if such vacancy had not happened. (h)

If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be a chairman of such meeting. (h)

Orders and Precepts of Board.

All orders of the Board for payment of money, and all precepts issued by the Board, shall be deemed to be duly executed if signed by two or more members of the Board authorized to sign them by a resolution of the Board, and countersigned by the Clerk; but it shall not be necessary in any legal proceeding to prove that the members signing any such order or precept were authorized to sign them, and such authority shall be presumed until the contrary is proved. (h)

Summons and Notices.

Any summons or notice, or any writ or any proceeding, at law or in equity, requiring to be served upon the Board, may be served by the same being left at or transmitted through the post in a prepaid letter directed to the office of the Board, or being given personally to the district surveyor or Clerk of the Board. (i)

Any notice in respect of which no other mode of service is provided by the Highway Board in pursuance of powers in that behalf conferred on them, and any precept, summons, or order issued by the Board, may be served,—By delivery of the same personally on the party required to be served; or, by leaving the same at the usual or last known place of abode of such party as aforesaid; or, by forwarding the same by post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by post it shall be sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the post-office; and in serving notice on the overseers or the waywardens

(h) 27 & 28 Vict. c. 101, s. 27 and sch. I. (i) 25 & 26 Vict. c. 61, s. 42.

(if more than one) of any parish it shall be sufficient to serve the same on any one of such officers in a parish. (j)

5. ELECTION OF WAYWARDENS.

Annual Election.

In every parish forming part of a highway district there shall be elected every year for the year next ensuing a waywarden, or such number of waywardens as may be determined by order of the justices: and a waywarden shall continue to act until his successor is appointed, and shall be re-eligible. (k)

Such waywarden or waywardens shall be elected in every parish forming part of a highway district at the meeting and time and in the manner and subject to the same qualification and the same power of appointment in the justices in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of surveyor would have been chosen or appointed under the 5 & 6 Wm. IV. c. 50, if this Act had not passed. (k)

The justices shall in their provisional order make provision for the election of a waywarden or waywardens in places where no surveyor or surveyors were elected previously to the place forming part of a highway district. (k)

Certificate as to Election.

Every waywarden, before taking his seat as a member of a Highway Board, shall produce a certificate of his having been duly elected or appointed a waywarden, and such certificate shall, in the case of an elected waywarden, be signed by the chairman of the vestry or other meeting at which he was elected; and in the case of a waywarden appointed by justices, be signed by the justices making the appointment. (l)

Vote of Waywarden.

A waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden. (m)

(j) 27 & 28 Vict. c. 101, s. 26. (k) 25 & 26 Vict. c. 61, s. 10.

(l) 27 & 28 Vict. c. 101, s. 19. (m) Ibid. s. 19.

6. APPOINTMENT AND DUTIES OF OFFICERS.

Clerk, Treasurer, and Surveyors.

The Highway Board shall, at their first meeting or at some adjournment thereof, by writing under their seal, or by a minute of the Board signed by the chairman and countersigned by the Clerk of the Board (27 & 28 Vict. c. 101, s. 30), appoint a treasurer, clerk, and district surveyor; they may also at any meeting, if they think fit, appoint an assistant surveyor; and they may from time to time remove any of such officers, and appoint others in the room of such as may be so removed, or as may die or resign; they may also, out of any moneys in their hands, pay such salaries as they think reasonable to the clerk, and district and assistant surveyor, and to the treasurer, if they think necessary. Before the treasurer enters upon his office the Board shall take sufficient security from him for the due performance of the duties of his office. No appointment, however, except the first, to any of the offices above specified shall be made unless notice in writing has been sent to every member of the Board. (n)

If the Highway Board make default in appointing a treasurer, clerk, and district surveyor, or any of such officers, in pursuance of the "Highway Act, 1862," within three months after the day fixed by the justices for the holding of the first meeting of the Board, or within three months after a vacancy occurring in any of the offices, the justices in general or quarter sessions assembled may, if they think fit, appoint a person to any of the offices in respect of which the default has been made, and may fix the salary to be paid to the officer appointed; and any such appointment shall take effect and salary be recoverable in the same manner as if the officer appointed by the justices had been appointed by the Highway Board of the district; and it shall not be lawful for such Board, without the consent of the said justices, to remove any officer appointed by them under this section, or to lessen his salary, within one year from the date of his appointment. (o)

(n) 25 & 26 Vict. c. 61, s. 12. (o) 27 & 28 Vict. c. 101, s. 45.

Two Offices not to be held by the same Person.

Not more than one office of treasurer, clerk, and district or assistant surveyor of the same Highway Board shall be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person so accepts or holds the office of treasurer, clerk, or district or assistant surveyor, he shall be liable to a penalty not exceeding fifty pounds. (p)

Duties of Treasurer.

The treasurer shall receive, and hold to the account of the Board, all moneys paid to or for the use of the Board, and shall make payments thereout under orders of the Board, and shall once in every three months, on or at such days or times as the Board may direct, or oftener if required by the Board, make up an account of all the moneys received and paid by him, and deliver the same to the Clerk of the Board. (q)

Duties of Clerk.

The clerk shall in person, or by such deputy as may be allowed by the Board, attend all meetings of the Board, and shall conduct their correspondence, and enter and keep, in books to be provided for the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of the Board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the Board may direct. (r)

Duties of District Surveyor.

The district surveyor shall act as the agent of the Board in carrying into effect all the works and performing all the duties required by the Act to be carried into effect or to be performed by the Board, and he shall in all respects conform to the orders of the Board in the execution of his duties; and the assistant surveyor, if any, shall perform

(p) 25 & 26 Vict. c. 61, s. 13.

(q) Ibid. s. 14. (r) Ibid. s. 15.

such duties as the Board may require, under the direction of the district surveyor. (s)

Exemption from Toll.

No toll shall be demanded by virtue of any Act of Parliament on any turnpike road from the surveyor of a Highway Board when executing or proceeding to execute his duties as surveyor, and all the provisions applicable to the exemption in the 3 Geo. IV. c. 126, shall apply to the case of the exemption of the surveyor from toll. (t)

Outgoing Surveyors.

On the formation of a highway district, the following regulations shall be enacted with respect to the surveyors and the Highway Board:—1. No surveyor shall be appointed under the principal Act for any parish within the district. 2. The outgoing surveyor of every parish within the district shall continue in office until seven days after the appointment of the district surveyor by the Highway Board of the district of such outgoing surveyor, and no longer; and he may recover any highway rate made and then remaining unpaid, in the same manner as if the new Act had not been passed; and the money so recovered shall be applied, in the first place, in reimbursing any expenses incurred by him as surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction, and the surplus (if any) shall be paid by him to the treasurer of the Highway Board; and he shall be entitled to receive from the Highway Board any sum not exceeding five pounds, which on the allowance of his accounts shall be found to be due to him as surveyor after the collection and expenditure of the whole of the highway rate made in the parish during the last year. 3. The Highway Board shall, for all the purposes of the principal Act, except that of levying highway rates, be deemed to be the successor in office of the surveyor of every parish within the district. (u)

Officers of Highway Board to Account.

All officers appointed by the Highway Board shall, as

(s) 25 & 26 Vict. c. 61, s. 16.

(t) Ibid. s. 37.

(u) Ibid. s. 43; and 27 & 28 Vict. c. 101, s. 28.

often as required by them, render to them or to such persons as they appoint, a true, exact, and perfect account in writing under their hands, with the proper vouchers, of all moneys which they may to the time of rendering their accounts have received and disbursed on account or by reason of their respective offices. In case any money so received by any officer remains in his hands, it shall be paid to the Board, or to such person or persons as they in writing under their hands empower to receive it; and if any officer refuses or wilfully neglects to render and give such account, or to deliver up the vouchers, or for the space of fourteen days after being required by the Board to do so refuses or wilfully neglects to give up to them or to such person or persons as they appoint all books, papers, writings, tools, and things in his hands, custody, or power relating to the execution of his office, any justice of the peace for the county where the officer making default is or resides, upon application made to him for that purpose by or on behalf of the Board, may make inquiry of and concerning the default in a summary way, and by warrant under his hand and seal to cause such money as may appear to be due and unpaid to be levied by distress and sale of the goods and chattels of the officer, rendering to him the overplus (if any) on demand, after payment of the money remaining due, and deducting the charges and expenses of making the distress and sale. If sufficient distress cannot be found, or if it appears that the officer has refused or wilfully neglected to give an account, or to deliver up all books, papers, writings, tools, matters, and things in his custody or power relating to the execution of his office, the justice shall commit him to the house of correction or common gaol, there to remain without bail until he gives a true and perfect account duly verified, and produces and delivers up the vouchers relating to it, and pays the money (if any) remaining in his hands according to the direction of the Board, or has compounded with the Board and paid the composition (which composition the Board are empowered to make and receive), or until he delivers up the books, papers, and writings, tools, matters, and things, or has given satisfaction to the Board concerning them. No officer who may be committed on account of his not having sufficient goods and chattels as aforesaid shall, however, be

detained in prison by virtue of the Act for any longer time than six calendar months. (v)

7. WORKS AND DUTIES OF HIGHWAY BOARDS.

Maintenance of Highways.

The Highway Board shall maintain in good repair the highways within their district, and shall, subject to the provisions of the Act, as respects the highways in each parish within their district, perform the same duties, have the same powers, and be liable to the same legal proceedings as the surveyor of the parish would have performed, had, and been liable to if the Act had not passed. It shall be the duty of the district surveyor to submit to the Board at their first meeting in every year an estimate of the expenses likely to be incurred during the ensuing year for maintaining and keeping in repair the highways in each parish within the district of the Board, and to deliver a copy of such estimate as approved or modified by the Board so far as the same relates to each parish to the waywarden thereof. (w)

The Highway Board may and is authorized to contract for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining and keeping in repair all or any part of the highways of any parish within their highway district, for any period not exceeding three years. (x)

Contracts by Waywardens.

By 26 & 27 Vict. c. 61, s. 1, no waywarden shall directly or indirectly contract for the repair of any roads, or for any other work to be executed under the provisions of the 25 & 26 Vict. c. 61 within the parish for which he is elected waywarden, or within any other parish in the same district, under a penalty of ten pounds with full costs of suit; and by section two of the same Act the Highway Board are not liable to pay for any work so contracted for. But now by 27 & 28 Vict. c. 101, s. 20, notwithstanding anything contained in the 25 & 26 Vict. c. 61, or in any

(v) 25 & 26 Vict. c. 61, s. 31.

(w) Ibid. s. 17.

(x) 27 & 28 Vict. c. 101, s. 52.

other Act, any waywarden may contract for the supply or cartage of materials within the parish for which he is waywarden, with the licence of two justices assembled at petty sessions, such licence to be granted on the application of the Clerk of the Highway Board, who must be authorized to make such application by a resolution of his Board assembled at a meeting of which notice has been given.

Roads out of Repair.

Where complaint is made to any justice of the peace that any highway within the jurisdiction of the Highway Board is out of repair, the justice shall issue two summonses, the one addressed to the Highway Board and the other to the waywarden of the parish liable to the repair of the highway, requiring the Board and waywarden to appear before the justices at some petty sessions, in the summons mentioned, to be held in the division where the highway is situate. At such petty sessions, unless the Board undertake to repair the road to the satisfaction of the justices, or unless the waywarden deny the liability of the parish to repair, the justices shall direct the Board to appear at some subsequent petty sessions to be then named, and shall either appoint some competent person to view the highway, and report to them on its state at such other petty sessions, or fix a day, previous to such petty sessions, at which two or more of them will themselves attend to view the highway. At the last-mentioned petty sessions, if the justices are satisfied, either by the report of the person they appointed, or by their own view, that the highway complained of is not in a state of complete repair, it shall be their duty to make an order on the Board limiting a time for the repair of the highway complained of. If the highway is not put in complete and effectual repair by the time limited in the order, the justices in petty sessions shall appoint some person to put the highway into repair, and shall by order direct that the expenses of making the repairs, together with a reasonable remuneration to the person appointed for superintending the repairs, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Board. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, in the

same manner as if it were an order of general or quarter sessions, and be enforced accordingly. (y)

Expenses of Repairs of Highways.

All expenses directed to be paid by the Board in respect of the repairs of any highway shall be deemed to be expenses incurred by the Board in repairing the highway, and shall be recovered accordingly. (y)

Appearance of Highway Board before Justices.

The Highway Board may appear before the justices at petty sessions by their district surveyor or clerk, or any member of the Board. (y)

How, when obligation to Repair is disputed.

When, on the hearing of any summons respecting the repair of any highway, the liability to repair is denied by the waywarden on behalf of his parish, or by any party charged therewith, the justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpœnaed, at the next assizes to be holden in and for the county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein the highway is situate, against the inhabitants of the parish, or the party charged therewith, for suffering and permitting the highway to be out of repair. The costs of such prosecution shall be paid by such party to the proceedings as the court before whom the case is tried shall direct, and if directed to be paid by the parish shall be deemed to be expenses incurred by the parish in keeping its highways in repair, and shall be paid accordingly. (z)

Discontinuance of unnecessary Highways.

When any Highway Board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the "Highway Act, 1835," to procure the stopping up of any highway, save only that the

(y) 25 & 26 Vict. c. 61, s. 18.

(z) Ibid. s. 19.

other Act, any waywarden may contract for the supply or cartage of materials within the parish for which he is waywarden, with the licence of two justices assembled at petty sessions, such licence to be granted on the application of the Clerk of the Highway Board, who must be authorized to make such application by a resolution of his Board assembled at a meeting of which notice has been given.

Roads out of Repair.

Where complaint is made to any justice of the peace that any highway within the jurisdiction of the Highway Board is out of repair, the justice shall issue two summonses, the one addressed to the Highway Board and the other to the waywarden of the parish liable to the repair of the highway, requiring the Board and waywarden to appear before the justices at some petty sessions, in the summons mentioned, to be held in the division where the highway is situate. At such petty sessions, unless the Board undertake to repair the road to the satisfaction of the justices, or unless the waywarden deny the liability of the parish to repair, the justices shall direct the Board to appear at some subsequent petty sessions to be then named, and shall either appoint some competent person to view the highway, and report to them on its state at such other petty sessions, or fix a day, previous to such petty sessions, at which two or more of them will themselves attend to view the highway. At the last-mentioned petty sessions, if the justices are satisfied, either by the report of the person they appointed, or by their own view, that the highway complained of is not in a state of complete repair, it shall be their duty to make an order on the Board limiting a time for the repair of the highway complained of. If the highway is not put in complete and effectual repair by the time limited in the order, the justices in petty sessions shall appoint some person to put the highway into repair, and shall by order direct that the expenses of making the repairs, together with a reasonable remuneration to the person appointed for superintending the repairs, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Board. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, in the

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When, on the hearing of any summons respecting the repair of any highway, the liability to repair is denied by the waywarden on behalf of his parish, or by any party charged therewith, the justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein the highway is situate, against the inhabitants of the parish, or the party charged therewith, for suffering and permitting the highway to be out of repair. The costs of such prosecution shall be paid by such party to the proceedings as the court before whom the case is tried shall direct, and if directed to be paid by the parish shall be deemed to be expenses incurred by the parish in keeping its highways in repair, and shall be paid accordingly. (z)

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When any Highway Board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the "Highway Act, 1835," to procure the stopping up of any highway, save only that the

(y) 25 & 26 Vict. c. 61, s. 18.

(z) Ibid. s. 19.

order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; for the purpose of such proceedings, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require: Provided, that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the Clerk of the Highway Board for the district in which such highway is situated, it appear to any Court of General or Quarter Sessions of the Peace that from any change of circumstances since the time of the making of any such order under which the liability of the parish to repair such highway has ceased the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made; and the court may by their order direct the expenses of and incident to such application to be paid as they may see fit. (a)

Repair of Roads over Bridges.

The Highway Board of any district may from time to time contract for any time not exceeding three years with any person or body of persons, corporate or unincorporate, to repair any highways, turnpike roads, or roads over county or other bridges, or any part thereof, for the repairing of which such persons or body of persons are liable; and any persons or body of persons liable to repair any roads may contract with the Highway Board for the repairing any highways, inclusive as aforesaid, or any part thereof, which the Highway Board is liable to make or repair; and the money payable under any contract made in pursuance of this section shall be raised in the same manner and be paid out of the same rates as would have been applicable to defray the expenses of the repair of such highways if no contract had been made in respect thereto. (b)

(a) 27 & 28 Vict. c. 101, s. 21.

(b) Ibid. s. 22.

Improvements to Highways.

A Highway Board may make any of the following improvements in the highways within their jurisdiction:—

1. The conversion of any road that has not been stoned into a stoned road:
2. The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges:
3. The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair: (c)
4. The abolition of tolls on turnpike roads. (d)

With the approval of the justices in general or quarter sessions, the Highway Board may borrow money for the purpose of defraying the expenses of such improvements: but previously to applying for such approval the Board shall cause an estimate of the expense of the improvements to be made, and two months at the least before making their application shall give notice of their intention so to do. 1. By transmitting a copy to the Clerk of the Peace for the county or division. 2. By placing a copy of such notice for three successive *Sundays* on the church door of every church of the parish or parishes on behalf of which such works are to be done, or, in the case of any place not having a church, in some conspicuous position in such place.

The notice shall state the following particulars:—1. The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed: 2. The parish or parishes within the district by which the sum borrowed and the interest thereon is to be paid, and in case of more parishes than one being made liable to pay the principal and interest, the annual amounts to be contributed by each parish towards the payment thereof: 3. The number of years within which the principal moneys borrowed are to be paid off, not exceeding twenty years, and the amount to be set apart in each year for paying off the same: 4. The sessions at which the application is to be

(c) 27 & 28 Vict. c. 101, s. 48. (d) 35 & 36 Vict. c. 85, s. 15.

made. Upon the hearing of the application any person or persons may oppose the approval of the justices being given, and it shall be lawful for the justices to give or withhold their approval, with or without modification, as they think just. (e)

All moneys borrowed, together with the interest thereon, shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, after paying the sums due to the Highway Board on account of the district fund, in the same manner, so far as the creditor is concerned, as if the money had been borrowed on account of each parish alone; and the sums necessary to repay the borrowed moneys, with interest, shall in each parish be recoverable in the same manner as if they were expenses incurred by the Board in keeping in repair the highways of that parish. But it shall be the duty of the Highway Board, in case of any one parish paying more than its share of such borrowed money, or of the interest thereon, to make good to that parish the excess so paid out of the rates of the other parishes liable to contribute thereto. (e)

The justices may from time to time make general orders in relation to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any moneys. (e)

Purchase of Lands.

A Highway Board for the purpose of improving the highways within their district may purchase such lands or easements relating to lands as they may require; and "The Lands Clauses Consolidation Act, 1845," and the Act amending the same are incorporated, with the exception of the clauses relating to the purchase of land otherwise than by agreement. (f)

Mortgages.

The clauses of "The Commissioners Clauses Act, 1847," with respect to mortgages to be created by the Commissioners are incorporated, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver. In the construction of these

(e) 27 & 28 Vict. c. 101, s. 47. (f) Ibid. s. 53.

clauses "the Commissioners" shall mean "the Highway Board," and the Act provides for the form of mortgages and transfers of mortgages. (g)

Contributions towards Improvements in other Parishes or Districts.

Any parish may, with the consent of its waywarden, contribute to any improvements made in another parish, whether situate or not in the same district, if such first-mentioned parish consider such improvements to be for its benefit; and any Highway Board may contribute to any improvements made in another district if such improvements are, in the opinion of the Highway Board of the first-mentioned district, for the benefit of their district. The contribution to be made by one parish to another shall be payable in the same manner as if such contributions were moneys due from the contributing parish in respect of expenses incurred in keeping in repair the highways of that parish, and moneys contributed by one district to another district shall be payable out of the common fund of the contributing district. (h)

Erection of Fences by Owners of adjoining Lands.

No person through whose land a highway passes, which is to be repaired by the parish, shall become liable for the repair of such highway by erecting fences between the highway and the adjoining land, if they are erected with the consent in writing of the Highway Board of the district within which the highway is situate in the case of a place within the jurisdiction of a Highway Board, and in the case of any other place with the consent of the surveyor or other authority having jurisdiction over the highway. (i)

Driftways, Private Carriage or Occupation Roads.

Where the inhabitants of any parish are desirous of undertaking the repair and maintenance of any driftway, or any private carriage or occupation road, within their parish, in return for the use thereof, the district surveyor may, at the request of the inhabitants of the parish assembled in a vestry duly convened for the purpose, and

(g) 27 & 28 Vict. c. 101, s. 50. (h) Ibid. s. 49.

(i) 25 & 26 Vict. c. 61, s. 46.

with the consent in writing of the owner and the occupier of every part thereof, apply to the justices in petty sessions to declare the driftway or road to be a public highway to be repaired at the expense of the parish; and upon such application the justices may declare the way or road to be a public carriage road to be repaired at the expense of the parish. (j)

Encroachments on Highways.

If any person shall encroach by making or causing to be made any building, or pit, or hedge, ditch or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on the side or sides of any carriageway or cartway within fifteen feet of the centre thereof, or by removing any soil or turf from the side or sides of any carriageway or cartway, except for the purpose of improving the road, and by order of the Highway Board, or, where there is no Highway Board, of the surveyor, he shall be subject on conviction for every such offence to any sum not exceeding forty shillings, notwithstanding that the whole space of fifteen feet from the centre of such carriageway or cartway has not been maintained with stones or other materials used in forming highways; and it shall be lawful for the justices assembled at petty sessions, upon proof to them made upon oath, to levy the expenses of taking down such building, hedge, or fence, or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish, or restoring the injury caused by the removal of such soil or turf, upon the person offending: Provided, that where any carriageway or cartway is fenced on both sides no encroachment shall be allowed whereby such carriageway or cartway shall be reduced in width to less than thirty feet between the fences on each side. (k)

8. EXPENSES OF HIGHWAY BOARDS.

How to be charged.

The salaries of the officers appointed for each district and any other expenses incurred by any Highway Board for the common use or benefit of the several parishes within

(j) 25 & 26 Vict. c. 61, s. 36.

(k) 27 & 28 Vict. c. 101, s. 51.

such district, shall be annually charged to a district fund to be contributed by and charged upon the several highway parishes within such district in proportion to the rateable value of the property in each parish; but the expenses of maintaining and keeping in repair the highways of each highway parish within the district, and all other expenses legally payable by the Highway Board in relation to such parish, including any sums of money that would have been payable out of the highway rates of such parish if the same had not become part of a highway district, except such expenses as are in this Act authorized to be charged to the district fund, shall be a separate charge on each parish. (*l*)

The rateable value of the property in each parish shall be ascertained according to the valuation list or other estimate for the time being in force in such parish for the purposes of the poor rate, or if no such valuation list or estimate be in force, then in such manner as may be determined by the justices in petty sessions, subject to an appeal by any person aggrieved to the next general or quarter sessions. (*l*)

Precepts for payment of Money to Treasurer.

For the purpose of obtaining payment from the several highway parishes within their district of the sums to be contributed by them, the Highway Board shall order precepts to be issued to the waywardens or overseers of the parishes, stating the sum to be contributed by each parish, and requiring the officer to whom the precept is addressed, within a time to be limited by the precept, to pay the sum therein mentioned to the treasurer of the Board. (*m*)

In the case of a Highway Parish.

Where a highway parish is not a parish separately maintaining its own poor, or where in any highway parish it has, for a period of not less than seven years immediately preceding the passing of the "Highways Act, 1862," been the custom of the surveyor of highways for such parish to levy a highway rate in respect of property not subject by law to be assessed to poor rates, the precept of the Highway Board

(*l*) 27 & 28 Vict. c. 101, s. 32.

(*m*) Ibid. s. 33.

shall be addressed to the waywarden of the parish, and in all other respects it shall be addressed to the overseers. (n)

Where the precept is addressed to a waywarden he shall pay the sum thereby required out of a separate rate, and such separate rate shall, in the case of a parish in which for the period mentioned it has been the custom of the surveyor of highways to levy a highway rate in respect of property not subject by law to be assessed to poor rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such rate shall be assessed on and levied from the persons and in respect of the property on, from, and in respect of which a poor rate would be assessable and leviable if the parish of which he is waywarden were a place separately maintaining its own poor. (n)

No rate leviable by a waywarden shall be payable until the same has been published in manner in which rates for the relief of the poor are by law required to be published. (n)

A waywarden shall account to the Highway Board for the amount of all rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any rate so levied, above the amount for which the rate was made, to the treasurer of the Highway Board, to the credit of the parish within which such rate was made, and such surplus shall go in reduction of the next highway rate that may be leviable in such parish. (n)

In the case of a Poor Law Parish.

Where the precept is addressed to the overseers they shall pay the sum thereby required out of a poor rate to be levied by them, or out of any moneys in their hands applicable to the relief of the poor. (n)

Limitation of Amount to be Levied.

No contribution required to be paid by any parish at any one time in respect of highway rates shall exceed the sum of tenpence in the pound, and the aggregate of contribu-

tions required to be paid by any parish in any one year in respect of highway rates shall not exceed the sum of two shillings and sixpence in the pound, except with the consent of four-fifths of the ratepayers of the parish in which such excess may be levied present at a meeting specially called for the purpose, of which ten days' previous notice has been given by the waywarden of such parish, and then only to such extent as may be determined by such meeting. (o)

Charges on Rates.

All sums of money payable in pursuance of the precepts of a Highway Board shall, whether they are or not payable by the overseers of the poor, be subject to all charges to which ordinary highway rates are subject by law. (o)

Power to levy Rates.

All waywardens and overseers to whom precepts of a Highway Board are directed or authorized to be issued shall within their respective parishes have the same powers, remedies, and privileges, for and in respect of assessing and levying any rates required to be levied for making payments to a Highway Board, in the case of overseers, as they have in assessing and levying ordinary rates for the relief of the poor, and in the case of waywardens as they would have if the parish of which they are waywardens were a place separately maintaining its own poor, and they were overseers thereof, and the rate to be levied by them were a duly authorized poor rate. (p)

Appeals against Rates.

If any person feels aggrieved by any rate levied on him for the purpose of raising moneys payable under a precept of a Highway Board on the ground of incorrectness in the valuation of any property included in such rate, or of any person being put on or left out of such rate, or of the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the justices in special sessions in manner provided by the Act of the Session of the sixth and seventh years of the reign of His Majesty King William the Fourth, chapter ninety-six, sections six and

(o) 27 & 28 Vict. c. 101, s. 33.

(p) Ibid. s. 34.

seven, and all the provisions of the said sections shall be applicable to such appeal. (q)

Mode of enforcing Payments to Highway Boards.

If any payment required to be made by the overseers or waywardens of any parish of moneys due to a Highway Board is in arrear, any justice, on application under the hand of the Chairman for the time being or by the Clerk of such Board, may summon the overseers or waywardens to show cause at petty sessions why such payment has not been made; and the justices at such petty sessions, after hearing the complaint preferred on behalf of the Board, may, if they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the overseers or waywardens, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs, when levied and recovered, to be paid to the Board. (r)

Appointment of Collectors of Highway Rates.

The power of appointing paid collectors of highway rates with the consent of the inhabitants in vestry assembled, which is vested in a surveyor by the "Highway Act, 1835," and all the provisions of that Act relating to such appointment, shall be vested in and extend to any waywarden required to levy rates in pursuance of the Highway Acts, 1862 and 1864, or either of them; and any meeting of rate-payers entitled to elect a waywarden or waywardens shall be deemed to be included under the expression "Inhabitants in vestry assembled." (s)

9. ACCOUNTS OF HIGHWAY BOARD.

When to be made up, audited, and published.

The accounts of every Highway Board shall be made up and balanced to the thirty-first of December in every year. After the expiration of not less than fourteen days nor more than twenty-eight days from the thirty-first of December, the accounts shall be examined by the Board, and signed

(q) 27 & 28 Vict. c. 101, s. 37. (r) Ibid. s. 35. (s) Ibid. s. 31.

by the chairman. The Board may, if they think fit, appoint any fit person not being a member or officer of the Board to audit their accounts, and may award to him a reasonable compensation, to be paid out of the district fund. (t)

Within thirty days after the signature of the accounts by the chairman, the Board shall cause a statement showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars and in such form as the Secretary of State may direct, to be printed, and sent by post or otherwise to each member of the Board, and to the overseers of every parish within the district having overseers; and the Clerk of the Board shall furnish a copy of such statement to any ratepayer or owner of property situate within the district, on his application, and on the payment of a sum not exceeding one penny. (t)

The books of account of the Board shall at all seasonable times be open to the inspection of any ratepayer of any highway parish within the district of the Board. (t)

Statements of Accounts.

The Clerk to every Highway Board shall, within such thirty days after the audit, transmit the statement of accounts to the Local Government Board, under a penalty not exceeding ten pounds for neglect. (u) The statements so transmitted are to be abstracted, and the abstracts laid before both Houses of Parliament. (v) And the Local Government Board may cause to be prepared such forms for the statement as they may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the 12 & 13 Vict. c. 35; but no statement shall be transmitted under that Act concerning parishes wholly within a highway district. (w)

Appeal to Quarter Sessions against Expenditure, &c.

Where any waywarden of a highway parish of a district,

(t) 27 & 28 Vict. c. 101, s. 36.

(u) 25 & 26 Vict. c. 61, s. 27; and 35 & 36 Vict. c. 79, s. 36.

(v) Ibid. s. 28. (w) Ibid. s. 29; and 35 & 36 Vict. c. 79, s. 36.

or any ratepayer of such parish, feels aggrieved in respect of the matters following:

1. In respect of any order of the Highway Board for the repair of any highway in his parish on the ground that such highway is not legally repairable by the parish, or in respect of any other order of the Board on the ground that the matter to which such order relates is one in regard to which the Board have no jurisdiction to make an order;
2. In respect of any item of expense charged to the separate account of his parish on the ground that such item of expense has not in fact been incurred or has been incurred in respect of a matter upon which the Board have no authority by law to make any expenditure whatever;
3. In respect of any item of expenditure charged to the district fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the Board has no authority by law to make any expenditure whatever;
4. In respect of the contribution required to be made by each parish to the district fund on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by this Act;

he may, upon complying with the conditions to be after mentioned, appeal to the Court of General or Quarter Sessions having jurisdiction in the district; but no appeal shall be had in respect of any exercise of the discretion of the Board in matters within their discretion; and no appeal shall be had in respect of the matters and upon the grounds herein-before mentioned. (x)

Conditions of Appeal.

No such appeal shall be entertained by any Court of General or Quarter Sessions unless the following conditions have been complied with: 1. Notice of the intention of appeal must be served by the appellant on the clerk of the Highway Board in the case of an appeal against an order

(x) 27 & 28 Vict. c. 101, s. 38.

within two months after the order, and in the case of an appeal in respect of any item of expense or contribution within one month after the statement of the account of the Board has been sent to each member of the Board as herein-before mentioned: 2. The notice must state the matter appealed against, and the ground of the appeal. On the receipt of the notice the Board may serve a counter-notice on the appellant, requiring him to appear in person or by his agent at the next meeting of the Board and support his appeal. On hearing the appellant the Board may rectify the matter complained of, and if they do so to a reasonable extent, and tender to the appellant a reasonable sum for the costs of his attendance, it shall not be lawful for the appellant to proceed with his appeal. In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the Board shall be deemed part of the costs of the appeal. (y)

Reference to Arbitration.

If at any time after notice of appeal has been given it appears to the court, on the application of either party in the presence of or after notice has been given to the other party, that the matter in question in such appeal consists wholly or in part of matters of mere account which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court; and the award made on such arbitration shall be enforceable by the same process as the order of the Court of Quarter Sessions. (z)

The provisions of "The Common Law Procedure Act, 1854," relating to compulsory references, shall be deemed to extend to arbitrations directed by the Court of Quarter Sessions. (a)

Proceedings on Appeal.

If upon the hearing of the appeal it appears to the court that the question in dispute involves an inquiry as to whether

(y) 27 & 28 Vict. c. 101, s. 39. (z) Ibid. s. 40. (a) Ibid. s. 41.

a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the court may either themselves decide such question, or may impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to such jury such questions in relation to the matters of fact in dispute as the court think fit; and the verdict of such jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them. The questions so submitted shall be in the form and shall be tried as nearly as may be in the manner in which feigned issues are ordinarily tried, and the court shall decide the parties to be plaintiffs and defendants in such trials; and subject as aforesaid, the court may, upon the hearing of any appeal, confirm, reverse, or modify any order of the Highway Board, or rectify any account appealed against. (b)

Costs of Appeal.

If the appellant is successful, the costs shall, unless the court otherwise orders, be paid by the Board, and shall be charged to the parishes within the jurisdiction of the Board other than the parish to which the appellant belongs in the same proportions in which such parishes contribute to the common fund of the Board.

If the appellant is unsuccessful, the Board, if the waywarden be the appellant, may charge the costs of the appeal to the parish to which the appellant belongs in the same manner as if they were expenses incurred in repairing the roads in such parish, and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the Board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the Board; but if some ratepayer other than the waywarden is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recovered under "The Highway Act, 1862." (c)

(b) 27 & 28 Vict. c. 101, s. 42.

(c) Ibid, s. 43.

Jurisdiction of Justices.

Places situate in different counties, and places situate partly in one county and partly in another county, when united in one highway district, shall, for all matters relating to appeals to quarter sessions against accounts, be deemed to be subject to the jurisdiction of the justices of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places or parts of places were situate in such county. (d)

10. HIGHWAYS REPAIRABLE RATIONE TENURÆ.

Recovery of Expenses of Repair.

Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, shall be adjudged in the manner provided by the "Highway Act, 1862," (e) to be out of repair, the Highway Board of the district in which it is situate may, if they see fit, direct their surveyor to repair it, and the expenses to be incurred in the repair shall be paid by the person liable to do the repairs; and any justice, upon the application of any person authorized in that behalf by the Highway Board, may summon the person liable to pay the expenses to appear before two justices, and upon the appearance of the parties, or in the absence of either of them, the justices may hear and determine the matter, and make such order, as well as to costs or otherwise, as may seem just to them. (f)

How they may be made repairable by the Parish.

Where any person or corporation is liable, by reason of tenure of lands or otherwise, to repair any highway situate in any highway district, the person or corporation so liable, or the Highway Board, (g) may apply to any justice of the peace for the purpose of making the highway a highway to

(d) 27 & 28 Vict. c. 101, s. 44.

(e) Ibid. s. 23.

(f) 25 & 26 Vict. c. 61, s. 34.

(g) 27 & 28 Vict. c. 101, s. 24.

be repaired and maintained by the parish in which it is situated, who shall thereupon issue summonses requiring the waywarden of the parish, the district surveyor, and the person so liable to repair the highway, to appear before two or more justices in petty sessions assembled, who shall proceed to examine and determine the matter, and, if they think fit, make an order under their hands that the highway shall be a highway to be thereafter repaired and maintained by the parish, and fix a certain sum to be paid by such person or corporation to the Highway Board of the district, in full discharge of all claims thereafter in respect of the repair and maintenance of the highway. In default of payment of such sum, the Board may proceed for its recovery in the same manner as for the recovery of penalties or forfeitures are recoverable. When the sum so fixed to be paid in full discharge of all claims in respect of the repair and maintenance of the highway exceeds fifty pounds, it shall be invested in the name of the Highway Board of the district in some public Government securities, and the interest and dividends applied by the Board towards the repair and maintenance of the highways within the parish in which the highway is situated. When, however, the sum does not exceed fifty pounds, the same, or any part of it, at the discretion of such Highway Board, shall from time to time be applied by the Board towards the repair and maintenance of the highways within the parish. Any person aggrieved by any order of justices so made may appeal to a Court of General or Quarter Sessions holden within four months from the date of the order; but no appeal shall be entertained unless the appellant has given to the other party to the case a notice in writing of the appeal, and of the matter of it, within fourteen days after the order, and seven clear days at the least before the sessions, and has entered into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned to appear at the sessions, and to try the appeal, and abide the judgment of the court, and pay such costs as may be awarded. Upon the notice of appeal being given, and the recognizance being entered into, the court shall hear and determine the matter of the appeal, and make such order, with or without costs to either party, as to the court may seem meet. From and after the making of the order by the justices, or by the court on

appeal, as the case may require, the highway shall be repaired in like manner and at the like expense as highways which a parish is liable to repair. (h)

11. MISCELLANEOUS PROVISIONS.

Jurisdiction of Justices.

No justice of the peace shall act as such in any matter in which he has already acted as a member of the Highway Board, and in which the decision of the Board is appealed against. (i)

Jurisdiction of Justices in Petty Sessions.

The justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorized under the Highway Acts or any of them to exercise in special sessions; and no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions in any matter merely on the ground that he is by virtue of his office a member of any Highway Board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such Board. (j)

Highways under Local Acts.

All the provisions of the principal Act for widening, diverting, and stopping up highways shall be applicable to all highways which now are or may hereafter be paved, repaired, or cleansed under or by virtue of any local or personal Act or Acts of Parliament, or which may be situate within the limits of any such Act or Acts, except highways which any railway company, or the owners, conservators, commissioners, trustees, or undertakers of any canal, river, or inland navigation, are liable by virtue of any Act of Parliament relating to such railway, canal, river, or inland navigation to make, maintain, repair, or cleanse. (k)

Adoption of Roads by Councils of Boroughs.

There are in certain boroughs in England and Wales

(h) 25 & 26 Vict. c. 61, s. 35.

(i) Ibid. s. 38.

(j) 27 & 28 Vict. c. 101, s. 46.

(k) 25 & 26 Vict. c. 61, s. 44.

roads and highways that are now and have heretofore been repaired by the inhabitants of the several parishes or townships within which they are situated, and who also contribute and pay to the general rates levied for the repair of the public streets, roads, and highways maintained and kept in repair by the council of such boroughs, and a great burthen is thereby imposed upon the ratepayers of these parishes and townships. It being doubtful whether the council of such boroughs have the power to adopt such parish roads and highways, or to apply the rates collected in such boroughs in repairing them: it is enacted, That the council of every such borough in England and Wales, upon the petition of the majority of the ratepayers of such parishes or townships present at a public meeting duly convened, may adopt all or any of such parish roads and highways as the council shall in its discretion consider advisable, and apply the rates levied and collected by the council for the repair of the public streets, roads, and highways within the borough in repairing and maintaining such parish roads and highways. It is, however, competent for such council, previous to adopting such parish roads and highways, to require the provisions contained in any local Act applying to the public streets, roads, and highways of the borough, to be complied with. (1)

Cattle found straying, &c., on Highways.

If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on or lying about any highway, or across any part thereof, or by the sides thereof (except on such parts of any highway as pass over any common or waste or uninclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the parish where the same shall be found, or to such other place as may have been provided for the purpose: Provided always, that no owner of

any such animal shall in any case pay more than the sum of thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorized keeper of the pound: any right of pasture which may exist on the sides of any highway is not however to be interfered with. (m)

Recovery of Penalties, &c.

All penalties under the Act, and all moneys recoverable as penalties, may be recovered summarily before any two or more justices in the manner directed by the 11 and 12 Vict., c. 43, and any Act amending the same; but where any sum adjudged to be paid under the Act in respect of penalties or moneys exceeds five pounds, an appeal may be had by any person aggrieved to a court of general or quarter sessions in manner provided by the 110th section of the Act of the 24 and 25 Vict., c. 96, to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences. (n)

Definition of Terms.

In the Act for the better Management of Highways in England, the word "county" shall not include a "county of a city" or "a county of a town," but where a county is divided into ridings or other divisions having a separate court of quarter sessions of the peace, it shall mean each such division or riding, and not the entire county. For the purposes of the Act all liberties and franchises, except the liberty of St. Albans, which shall be considered a county, and except boroughs, shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary. (o) By 27 & 28 Vict. c. 101, s. 3, "county" shall include any division of a county that has a separate county treasurer. The word "borough" shall mean a borough as defined by the 5 & 6 Wm. IV. c. 76, "for the Regulation of Municipal Corporations in England and Wales," or any place to which the provisions of that Act

(m) 27 & 28 Vict. c. 101, s. 25. (n) 25 & 26 Vict. c. 61, s. 47.
(o) Ibid. s. 2.

have been or shall hereafter have been extended. (*p*) The word "parish" shall include any place maintaining its own highways; the expressions "highway district" and "highway board" shall refer only to highway districts formed and highway boards constituted in pursuance of the Act. (*q*)

The General Highway Act, 5 & 6 Wm. IV. c. 50, "to consolidate and amend the laws relating to highways in England," is distinguished in the 25 & 26 Vict. c. 61 as "the principal Act;" and the two Acts, and the other Acts amending the principal Act, are included under the expression "the Highway Acts." (*r*)

But by 27 & 28 Vict. c. 101, s. 1, the 5 & 6 Wm. IV. c. 50, is to be cited by the short title of the "Highway Act, 1835;" 25 & 26 Vict. c. 61, by the short title of the "Highway Act, 1862;" and the 27 and 28 Vict. c. 101, by the short title of the "Highway Act, 1864."

All these Acts and any Acts passed or to be passed amending them are included under the short title of "The Highway Acts;" and both of the Acts of 1862 and 1864 shall be construed as one. (*s*)

"Poor law parish" shall mean a place that separately maintains its own poor. "Highway parish" shall mean a place that after the constitution of a highway district separately maintains its own highways, and is entitled to return a waywarden or waywardens to the Highway Board of the district. (*t*)

Further, any parish, township, tithing, hamlet, or other place having a known legal boundary in which there are no highways repairable at the expense of the place, or in which the highways are repaired at the expense of any person, body politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever than out of a highway rate or other general rate, shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways. (*u*)

Where part of a parish is, in pursuance of 24 & 25 Vict. c. 61, s. 9, treated as forming part of a district constituted

(*p*) 25 & 26 Vict. c. 61, s. 2.
(*q*) 27 & 28 Vict. c. 101, s. 2.

(*g*) Ibid. s. 3. (*r*) Ibid. s. 4.
(*t*) Ibid. s. 3. (*u*) Ibid. s. 5.

under the Local Government Act, 1858, for all purposes connected with the repair of highways and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the Highway Acts, 1862 and 1864, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district, without requiring the consent of the local board to be given; and where the highways of one part of a parish are, in pursuance of a private Act of Parliament, repairable out of a different rate from that out of which the highways of the other part are repairable, each of such parts shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways. (v)

"Highway rate" shall include any rate, whether poor rate or not, out of the produce of which moneys are payable in satisfaction of precepts of a Highway Board. (v)

Construction of Highway Acts.

The following regulations shall be observed with respect to the construction of the principal Act and the Act 25 & 26 Vict. c. 61:—

That Act shall be construed as one with the principal Act so far as is consistent with its provisions. The ninth section of the principal Act, whereby it is enacted that a surveyor may be appointed by the inhabitants of a parish with a salary, shall not apply to any parish within any district formed under the new Act. The tenth section of the principal Act, whereby it is enacted that the surveyor or surveyors at the time of passing his or their accounts shall deliver to the justices a statement in writing of the name and residence of the person or persons appointed to succeed him or them as a surveyor or surveyors, shall not apply to any parish within any district formed under the new Act. The thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth sections of the principal Act, providing for the formation of parishes into districts, and the eighteenth and nineteenth sections of the principal Act, providing for the appointment of a Board in large parishes, shall not apply to any parish within any district formed under the new Act. The penalty imposed by s. 20 of the

(v) 27 & 28 Vict. c. 101, s. 3.

principal Act on the surveyor for neglect of duty shall not apply to a Highway Board constituted under the new Act. (w) The thirty-fifth section of the principal Act, whereby it is provided that the ratepayers of any parish may divide amongst themselves the carriage of materials for the repair of the highways, shall not apply to any parish within any district formed under the new Act. The thirty-ninth, fortieth, forty-third, forty-fourth, and forty-fifth sections of the principal Act relating to the accounts of surveyors shall not apply to the Highway Board of any district formed under the new Act. (w)

(w) 25 & 26 Vict. c. 61, s. 42.

THE HIGHWAY ACT, 1862.

25 & 26 Vict. Cap. 61.

AN ACT FOR THE BETTER MANAGEMENT OF HIGHWAYS
IN ENGLAND. [29TH JULY, 1862.]

WHEREAS it is expedient to amend the Law relating to highways in England: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PRELIMINARY.

Limits of Act.

i. This Act shall not extend to Scotland or Ireland.

Definition of "County" and "Borough."

2. The word county in this Act shall not include a "county of a city" or a "county of a town," but where a county as hereinbefore defined, (a) is divided into ridings or other divisions having a separate court of quarter sessions of the peace, it shall mean each such division or riding, and not the entire county; and for the purposes of this Act all liberties and franchises, (b) except the liberty of St. Albans, which shall

(a) The words "as hereinbefore defined," as here used, are not very intelligible; the word "county," if defined at all in the preceding part of the section, is only defined by the process of excluding "county of a city" and "county of a town;" and if such counties be excluded, then those which remain are the territorial counties, or divisions of counties, having separate courts of general or quarter sessions of the peace. By the Amending Act, 27 & 28 Vict. c. 101, s. 3, *post*, p. 87, "county" shall include any division of a county that has a separate county treasurer.

(b) A Chartered Corporate Town not under the Municipal Corpora-

be considered a county, and except boroughs as hereinafter defined, shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary; the word "borough" shall mean a borough as defined by the Act of the session holden in the Fifth and Sixth Years of King William the Fourth, Chapter Seventy-six, "for the regulation of municipal corporations in England and Wales," or any place to which the provisions of the said Act have been or shall hereafter have been extended. (c)

*Definition of "Parish," "Highway District," and
"Highway Board."*

3. The word "parish" shall include any place maintaining its own highways; (d) the expressions "highway district" and "highway board" shall refer only to highway districts formed and Highway Boards constituted in pursuance of this Act.

Definition of "Principal Act," and "Highway Act."

4. The Act passed in the session holden in the Fifth and Sixth years of the Reign of his late Majesty King William the Fourth, Chapter Fifty, and intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," is hereinafter distinguished as "the principal Act;" and this Act and the principal Act, and the other Acts amending the principal Act, are hereinafter included under the expression "the Highway Acts." (e)

tions Act would be included in the words "liberties and franchises," and for the purposes of the Act would be attached to the county. See Jacob's "Law Dictionary" and Wood's "Institute" as to the meaning of the word Franchise. As to the definition of the word "Justices," see the "Highway Act" of 1835, s. 5.

(c) By 5 & 6 Wm. IV. c. 76, s. 142, the word "borough" shall be construed to mean city, borough, port, cinque port, or town corporate named in one of the schedules (A) and (B) to the Act. See also the case of *Giles v. Glubb, post*, p. 50.

(d) See 27 & 28 Vict. c. 101, s. 3, for the definition of "Poor Law Parish" and "Highway Parish," and also s. 5 of that Act.

(e) See 27 & 28 Vict. c. 101, s. 1, "Short Title of Highway Acts."

FORMATION OF HIGHWAY DISTRICTS. (f)

Powers to justices, in General or Quarter Sessions assembled, to issue Provisional Orders forming Highway Districts.

5. Any five or more justices of a county may by writing under their hands require the Clerk of the Peace to add to or send with the notice required by law to be given of the holding of courts of general or quarter sessions (g) a notice in the form marked (A) in the schedule, or as near thereto as circumstances admit, that at the court therein mentioned a proposal (h) will be made to the justices to divide the county or some part thereof into highway districts, or to constitute the whole or some part thereof a highway district, (i) and also require the Clerk of the Peace to send by

(f) With reference to highways and bridges in the county of Sussex, see 28 Vict. c. 37.

(g) By 11 Geo. IV. & 1 Wm. IV. c. 70, s. 25, the justices of the peace in every county, riding, or division for which quarter sessions of the peace ought to be held, shall hold their general quarter sessions of the peace in the first week after the 11th day of October, in the first week after the 28th day of December, in the first week after the 31st day of March, and in the first week after the 24th day of June. But with regard to the sessions which fall to be held during the time usually fixed for the spring assizes, the 4 & 5 Wm. IV. c. 47 enacts that the justices assembled in their general quarter sessions in the week next after the 28th December in any year, may name (if they shall see occasion to do so) two justices of the peace, who shall be empowered, as soon as may be after the time for holding the spring assizes shall be appointed, to fix the day for holding the next general quarter sessions of the peace for such county, riding, or division, so as such time shall not be earlier than the 7th day of March, nor later than the 22nd day of April, and to give notice of the day so fixed by advertisement in such newspaper as shall be directed by the justices so assembled; and in every such case the general quarter sessions held on the day so fixed and notified shall be valid, and it shall not be necessary to hold any sessions of the peace for such county, riding, or division in the next week after the 31st day of March. Where, however, no such day is fixed, the sessions shall be held in the week next after the 31st day of March, as by the 11 Geo. IV. & 1 Wm. IV. c. 70, s. 25, is required.

(h) The "proposal" will properly be made by the five or more justices who give the notice in writing referred to in the preceding part of the section.

(i) According to the form (A) in the schedule to this Act, the proposal may be (1) to divide the county into highway districts, (2) to divide the parts of a county into a highway district, (3) to constitute the whole county a highway district, (4) or to constitute particular parishes in the county a highway district.

post in a prepaid letter notices in the aforesaid form to the churchwardens or overseers of every parish mentioned in the said notice; (*j*) and upon such requisition being complied with the justices assembled at the court of general or quarter sessions mentioned in the notice may entertain such proposal, and make a provisional order dividing their county or some part thereof into highway districts, or constituting the whole or some part of their county a highway district, for the more convenient management of highways, but such order shall not be of any validity unless it is confirmed by a final order of the justices assembled at some subsequent court (*k*) of general or quarter sessions. (*l*)

Regulations as to the making, &c., of Orders of Justices.

6. The following regulations shall be enacted as to the making, confirmation, and approval of the orders of justices for forming highway districts:—

1. The justices making a provisional order under this Act shall appoint some subsequent court of general or quarter sessions, to be held within a period of not more than six months, for the taking into consideration the confirmation of the provisional order by a final order.
2. The Clerk of the Peace shall add to or send with the notice required by law to be given of the holding of courts of general or quarter sessions (*m*) a notice in the form marked (B) in the schedule hereto, or as

(*j*) The notice is to be sent to the churchwardens or overseers; it will, however, be the most advisable course to address it to the churchwardens and overseers of the several parishes. When justices propose to form a highway district, it is a condition precedent that notice be first sent to all the parishes proposed to be included, and the order is bad if any parish has been omitted. *Reg. v. Sussex* *JJ.*, J. P. 469.

(*k*) The subsequent court must be held within a period of not more than six months after the making of the provisional order. See s. 6, *post*.

(*l*) The proviso to this section is repealed by 27 & 28 Vict. c. 101, s. 6, and in lieu of it, it is enacted that when it is proposed that only part of a county is to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district, or some part thereof, is situate.

(*m*) As to the sessions, see 11 Geo. IV. & 1 Wm. IV. c. 70, s. 25, *ante*, page 47.

near thereto as circumstances admit, of the appointment so made by the justices in relation to the confirmation of the provisional order.

3. The justices assembled at the appointed court of general or quarter sessions may make a further order quashing the provisional order, or confirming it with or without variations, or respiting the consideration of such provisional order to some subsequent court of general or quarter sessions, provided,—

Firstly, that where the variations made extend to altering the parishes (*n*) constituting any highway district or districts as formed in the provisional order, the order shall be deemed to be provisional only, and shall be dealt with accordingly.

Secondly, that where a respite is made to any subsequent general or quarter sessions, the Clerk of the Peace shall give notice of such respite in manner in which he is required to give notice in respect of sessions at which a provisional or final order is proposed to be made. (*o*)

4. The provisional order shall state the parishes to be united in each district, (*p*) the name by which the district is to be known, (*q*) and the number of waywardens (such number to be at least one) which each parish is to elect. (*r*)

(*n*) The words "altering the parishes" appear to mean adding to or taking one or more parishes from those proposed to be united into a highway district. See also 27 & 28 Vict. c. 101, s. 4, *post*, p. 87.

(*o*) As to the sessions, see 11 Geo. IV. & 1 Wm. IV. c. 70, s. 25, *ante*, p. 47.

(*p*) Care must be taken that each parish named in the order comes within the definition of a parish in s. 3, *ante*, and in s. 3 of 27 & 28 Vict. c. 101. Further with regard to this provision see 27 & 28 Vict. c. 101, s. 4, *post*.

(*q*) In no case should the name of an individual be given to the district. The proper name to give it will be the name of the principal parish comprised in it; or if the district be conterminous with a division of a county, as a hundred, &c., it should be named after the hundred, &c.

(*r*) As regards an alteration in the number of waywardens see 27 & 28 Vict. c. 101, s. 14. As to the election of waywardens see s. 10, *post*; and particularly the last division but one of that section, and the note thereon.

Where a provisional order for forming a highway district constituted

5. (s)
6. Notice of the provisional and final orders shall as soon as possible after the making thereof be given by the Clerk of the Peace, by publishing a copy in the *London Gazette* (*t*) and in one or more papers circulating in the county, or if the whole county is not affected by such order in one or more newspapers circulating in the district affected by such orders, (*u*) and by sending a copy by post in a prepaid letter to the overseers of every parish within the proposed

a certain township (E) and other parishes and places named therein a highway district, and directed that one waywarden should be elected for each of the said parishes, townships, and places, and the township of (E) was divided into three hamlets, each of which maintained its own highways, which were not separately named in the order, it was held that the provisional order and the final order based on it were bad, as the first did not state whether any or what waywardens were to be elected for the three hamlets under 25 & 26 Vict. c. 61, s. 6 (subsection 4).—*Reg. v. York. (W.R.)* 34 L. J. M. C. 227, 12 L. T. (N. S.) 580, 29 J. P. 440.

The borough of East Looe is an ancient borough, having liberties and franchises, with charters containing non-intermittent clauses, but is not a borough within the exception in s. 2 of the 25 & 26 Vict. c 61. It is wholly surrounded by the county of Cornwall, and maintains its own poor and highways. Under these circumstances, it was held that the justices of the county might take the proper proceedings in quarter sessions for making it a part of a highway district under the 25 & 26 Vict. c. 61, s. 5; and further, that they had jurisdiction to hear a complaint by the waywardens against the overseers of the poor of the borough for not paying to the treasurer of the Highway Board the sum ordered by the precept of the Board to be levied in the borough. It was also held that the following description of the borough—"The several parishes, townships, tithings, hamlets, or places of Liskeard Point, &c., &c., East Looe, &c., &c., shall be inserted, &c., &c."—in the order constituting the highway district, was not such an imperfect description as to vitiate the order.—*Giles v. Glubb*, 13 L. T. (N. S.) 526.

(s) This subsection is repealed by 27 & 28 Vict. c. 101, s. 10, which see, *post*, p. 91.

(t) But by 27 & 28 Vict. c. 101, s. 12, no order of justices forming a highway district shall be invalidated by reason of its not being published in the *London Gazette*.

(u) If any newspaper be published within the district it will be proper that the notices should be published in it; but they may also be published in any other newspaper "circulating" in the district; though what is meant by "circulating" is not very clear: the *Times* and other London newspapers "circulate" in most districts throughout the country.

highway district, and there shall be added to the notice of the provisional order the date of the sessions at which the confirmation of such order will be considered.

Restrictions on formation of Highway Districts.

7. The following restrictions shall be imposed with respect to the formation of highway districts in pursuance of this Act:—

Firstly, there shall not be included in any highway district formed in pursuance of this Act any of the following places; that is to say,—

Any part of a county to which the Act passed in the session holden in the Twenty-third and Twenty-fourth Years of the reign of Her present Majesty, Chapter Sixty-eight, and intituled "An Act for the better Management and Control of the Highways in South Wales," extends. (v)

The Isle of Wight. (w)

Any district constituted under the Public Health Act, 1848, and the Local Government Act, 1858, or either of such Acts. (x)

Any parish or place, the highways of which are at the time of the passing of this Act, or may be within six months afterwards, under the superintendence of a Board established in pursuance of section eighteen of the principal Act, unless with the consent of such Board. (y)

(v) That is to say, the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan. (See 23 & 24 Vict. c. 68, s. 44, in Glen's "Highway Laws," second edition.)

(w) The Local Act 53 Geo. III. cap. xcii. provides for repairing the roads and highways in the Isle of Wight.

(x) As regards highways in such districts, see Glen's "Treatise on the Law of Public Health and Local Government" (seventh edition); and also Glen's "Highway Laws" (second edition).

(y) It is only in parishes, the population of which by the then last census exceeds 5,000 persons, that Highway Boards can be established under the 5 and 6 Wm. IV. c. 50, s. 18. See *Reg. v. How*, 9 L. T. (N. S.) 385, 33 L. J. (N. S.) M. C. 53 as to that Act. The Highway Board of any such parish already established, or established within six months after the 29th of July, 1862, may consent to the parish being included in a highway district under this Act, and thereupon their functions as a separate Board would cease. By s. 42, subsection 4, *post*, the

Any parish or place within the limits of the metropolis as defined by the Act passed in the session holden in the Eighteenth and Nineteenth Years of Her Majesty, Chapter One Hundred and Twenty, and intituled "An Act for the better Local Management of the Metropolis." (z)

Any parish or place, or part of a parish or place, the highways whereof are maintained under the provisions of any local Act of Parliament. (a)*

Secondly, there shall not be included in any highway district formed in pursuance of this Act any parish or place or part of a parish or place within the limits of a borough without the consent, firstly, of the council of such borough, and, secondly, of the vestry of the parish which, or part of which, is proposed to be included. (b)

Thirdly, where any parish separately maintaining its own highways is situate in more than one county the whole of such parish shall, for the purposes of this Act, be deemed to be within the county within which the church of such parish, or (if there be no church) the greater part (c) of such parish, is situate.

Lastly, where a parish separately maintaining its own

18th and 19th sections of 5 & 6 Wm. IV. c. 50, relating to the appointment of Highway Boards for large parishes, shall not apply to any district formed under the 25 & 26 Vict. c. 61; but notwithstanding, such Boards may continue to be appointed; though, if they be appointed after the 29th January, 1863, the justices may include the parishes for which they are appointed in districts under the present Act without the consent of the Board. (See also *Milton near Sittingbourne v. Faversham District Highway Board*, 10 B. and S. 548.)

(z) See schedules (A) (B) and (C) of 18 & 19 Vict. c. 120.

(a) By 26 & 27 Vict. c. 94, s. 1, "Local Act," as here used, does not include Turnpike Acts.

(b) The consent of the vestry must be given at a meeting duly convened for the purpose, and the "proposal" should be stated in the notice convening the meeting. Further, with regard to this section, see 27 & 28 Vict. c. 101, s. 7, third subdivision; and also the same Statute, s. 8.

(c) The words here used, "greater part," are not very clear; they admit of more than one construction: they may refer to the greater part in respect of area, or to the greater part in respect of rateable value. Perhaps the former would be the proper construction, though practically it may not be of much moment which county the parish is deemed to be within. See, however, the new provision in 27 & 28 Vict. c. 101, s. 13, as to the union of parishes in different counties.

poor is divided into townships, tithings, hamlets, or places, each of which separately maintains its own highways, it shall be lawful for the justices, if they think fit, in their provisional order to combine such townships, tithings, hamlets, and places, and to declare that no separate waywardens shall be elected for such townships, tithings, hamlets, and places, and that such parish shall be subject to the same liabilities in respect of all the highways within it which were before maintained by such townships, tithings, hamlets, and places separately, as if all their several liabilities had attached to the whole parish; (d) and that a waywarden or waywardens shall be elected for such parish as a whole; and where such order is made, all the provisions herein contained in relation to parishes within the meaning of this Act shall be applicable to the parish formed by such combination. (e)

(d) By 4 & 5 Wm. IV. c. 76, s. 109, the word "parish" shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place, or division or district of a place, *maintaining its own poor*, whether parochial or extra-parochial: the above words, "parish separately maintaining its own poor," refer to a parish divided into townships, &c., which have not had separate overseers appointed, and therefore do not separately maintain their own poor. At common law, a *parish* is primarily liable to repair all public highways within its ambit; but, nevertheless, townships and other smaller divisions of a parish are often by custom liable to repair the highways within them. When such is the case, the Act enables the justices to combine the townships, &c., so that the whole Poor Law parish shall be liable jointly for the repair of the highways within it. Where a township or other division of a parish separately maintains its own poor, and does not come within the definition of a parish in s. 3 of the present Act, being further subdivided for highway purposes, the justices may, it would seem, combine the subdivided portions of the township, so as to make the area for the maintenance of the highways and the maintenance of the poor coincident. But, now, see the Amending Act 27 & 28 Vict. c. 101, s. 7, which enables the justices to combine one or more townships, &c., into a highway parish without combining the whole.

By the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113, s. 18) "in all Statutes, except there shall be something in the context inconsistent herewith, the word 'parish' shall, among other meanings applicable to it, signify a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed."

(e) With regard to townships or places, part of which is included in a district under the Local Government Acts, see the Local Government

LEGAL OBJECTIONS TO FORMATION OF DISTRICT.

Rules as to Objections and Evidence.

8. No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the formation of a highway district, after the expiration of three calendar months from the date of the publication in the *Gazette* of the order under which the district is formed; and the production of a copy of the *London Gazette* containing a copy of the order of justices forming a highway district shall be receivable in all courts of justice, and in all legal proceedings, as evidence of the formation of the district, and of the matters in the said order mentioned. (f)

HIGHWAY BOARD.

Constitution of Highway Board.

9. There shall be enacted, with respect to the constitution of the Highway Board, in each highway district, the provisions following; (that is to say,) (g)

(i.) The Highway Board shall consist of the waywardens elected in the several places within the district, in manner hereinafter mentioned, (g) and of the justices acting for the county and residing within the district. (h)

Act, 1861, in Glen's "Law of Public Health and Local Government," seventh edition.

(f) In every Highway Board district, therefore, it will be advisable that a copy of the *London Gazette*, in which the order of justices is published, should be carefully preserved with the records of the Board. But, now, see the provision on this subject in 27 & 28 Vict. c. 101, s. 12.

Where orders of justices must be objected to within three months, it is sufficient to obtain a rule for a certiorari within that time.—*Reg. v. Lindsey FF.*, 6 B. & S. 892, 35 L. J. M. C. 90, 13 L. T. (N. S.) 524, 12 Jur. (N. S.) 314.

(g) See s. 10, *post*.

Further with regard to this section see s. 39, *post*, p. 76, and 27 & 28 Vict. c. 101, s. 14, *post*.

(h) See the definition of the word "county" in s. 2, *ante*, and the note thereon. Borough justices, as they do not act for the county, will not be qualified as members of the Highway Board. County justices who have merely a place of business within the district will not be

- (2.) The Board shall be a body corporate, by the name of the Highway Board of the district to which it belongs, having a perpetual succession and a common seal, with a power to acquire and hold lands for the purposes of the Highway Acts, without any licence in mortmain: (*i*)
- (3.) No act or proceeding of the Board shall be questioned on account of any vacancy or vacancies in their body: (*j*)
- (4.) No defect in the qualification or election of any person or persons acting as member or members of the Board or committee of a Board shall be deemed to vitiate any proceedings of such Board in which he or they have taken part in cases where the majority of members parties to such proceedings are duly entitled to act: (*k*)
- (5.) Any minute made of proceedings at meetings of the Board or of committees of the Board, if signed by any person purporting to be the chairman of the Board or committee of the Board, either at the meeting of the Board or committee of the Board at which such proceedings took place, or at the next ensuing meeting of the Board or committee of the Board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is proved every meeting of the Board or committee of the Board in

considered as residing therein within the meaning of the enactment. According to Ross's Parliamentary Record for 1864, p. 32, Sir George Grey, Secretary of State for the Home Department, stated, in reply to a question put to him in the House of Commons, that magistrates residing in places which were exempted from the operation of the "Highway Act" were not ex-officio members of the District Board. But see the new provision as to the qualification of ex-officio waywardens in 27 & 28 Vict. c. 101, s. 29.

By 1 Mar. st. 2, c. 3, s. 8, no sheriff shall act as a justice of the peace during his sheriffalty; consequently a justice of the peace who is sheriff cannot act as a member of a Highway Board.

(*i*) As to the purchase of lands, see 27 & 28 Vict. c. 101, s. 53, *post*.

(*j*) Vacancies can only exist amongst the elected waywardens, as all justices acting for the county and residing within the district are ex-officio members of the Board. As to a quorum of members, see proceedings of Highway Boards in the first sch. to 27 & 28 Vict. c. 101, *post*.

(*k*) This is a similar provision to that contained in the 5 & 6 Vict. c. 57, s. 13, with respect to guardians of poor law unions.

respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified :

- (6.) No member of a Board, by being party to, or executing in his capacity of member, any contract or other instrument on behalf of the Board, or otherwise lawfully exercising any of the powers given to the Board, shall be subject to be tried or prosecuted, either individually or with others, by any person whosoever; and the bodies or goods or lands of the members shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, tried, or executed by them, or by reason of any other lawful act done by them in execution of any of the powers of the Board; and the members of the Board may apply any moneys in their hands for the purpose of indemnifying themselves against any losses, costs, or damages they may incur in execution of the powers granted to them. (l)
- (7.) The rules contained in the schedule hereunto with respect to the proceedings of Highway Boards, and the other matters therein contained, shall be observed in the same manner as if such rules were enacted in the body of this Act. (m)

ELECTION OF WAYWARDENS.

10. The following regulations shall be observed with respect to the election of waywardens in highway districts:

In every parish forming part of a highway district there shall be elected every year for the year next ensuing a waywarden, or such number of waywardens as may be determined by order of the justices: (n)

(l) This saves members of the Highway Board from personal responsibility, not only in respect of contracts and other instruments executed by them, but also in respect of all other lawful acts done by them in the execution of their powers. But see note (g) to 21 & 28 Vict. c. 101, s. 39, *post*.

(m) The schedule to this Act was repealed by 27 & 28 Vict., c. 101, s. 27, so far as relates to proceedings of Highway Boards, and another schedule enacted.

(n) The order of justices here referred to is the order forming the highway district. (See s. 6, subsection 4, *ante*.)

Such waywarden or waywardens shall be elected in every parish forming part of a highway district at the meeting and time and in the manner, and subject to the same qualification and the same power of appointment in the justices in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of surveyor would have been chosen or appointed if this Act had not passed: (o)

(o) 1. *As to the Meeting and Time of Appointment.*—By 5 & 6 Wm. IV. c. 50, s. 6, the inhabitants of every parish maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor in every year, are to elect one or more persons to serve the office of surveyor of the parish for the year then next ensuing. It is to be observed, however, that no vestry meeting is required by law to be held for the nomination of overseers, who, by 54 Geo. III. c. 91, are to be appointed by the justices on the 25th day of March, or within fourteen days next after that day, in each year. The ordinary way of appointing overseers is by precept from the justices to the high constable to require the overseers to make out a list of persons in the parish liable to serve, from which the overseers are chosen by the justices.—*Reg. v. Hoole*, 2 L. T. (N. S.) 472, S. C. Nom. *Reg. v. Lancashire* 77, 29 L. J. M. C. 214, shows that the justices may appoint overseers without the nomination of the vestry.

2. *As to the Qualification.*—By s. 7 of the 5 & 6 Wm. IV. c. 50, any person living within the parish, or any adjoining parish, and having an estate in houses, lands, tenements, or hereditaments, lying within such parish, in his own right or in right of his wife, of the value of £10 by the year, or a personal estate of the value of £100 (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish or within any adjoining parish) of the yearly value of £20, is eligible to be elected a surveyor of the highways; but no person who is exempted by law from serving the office of overseer is compellable to serve the office of surveyor. By s. 42, subsection 2, *post*, s. 9 of 5 & 6 Wm. IV. c. 50, as to the appointment of a paid surveyor, shall not apply to any parish within a highway district.

3. *As to Justices' Power of Appointment.*—By 5 & 6 Wm. IV. c. 50, s. 11, in case it shall appear on oath to the justices that the inhabitants of any parish have neglected or refused to nominate and elect a surveyor or surveyors, or that the outgoing surveyor, except that he had been directed by the inhabitants so to do, has delivered no statement of the name and residence of his successor (the provision as to the statement of the outgoing surveyor shall not apply to any parish within any district formed under the 25 & 26 Vict. c. 61; see s. 42, subsection 3, *post*), or that he is dead, or has ceased to possess the qualification, or has become disqualified, or that he has neglected to act, or

The justices shall in their provisional order make provision for the election of a waywarden or waywardens in

refused to carry into operation the duties imposed upon him, the justices are, by writing under their hands, at their next succeeding special sessions for the highways, to dismiss the surveyor, and to appoint any person whom they may think fit to be a surveyor of the parish till the next annual meeting. By s. 42, subsection 8, *post*, however, s. 45 of the 5 & 6 Wm. IV. c. 50, relating to the holding of special sessions for the highways, shall not apply to the Highway Board of any district formed under the 25 & 26 Vict. c. 61. Further with regard to special sessions, see 27 & 28 Vict. c. 101, s. 46, *post*. By 27 & 28 Vict. c. 101, s. 11, the justices may now, for the purpose of avoiding delay in bringing the Act into operation, appoint by their final order a day on which the first election of waywardens as members of the Highway Board is to take place.

At a meeting of the vestry of a parish on the 25th February, 1870, to elect a waywarden, under 25 & 26 Vict. c. 61, s. 10, and 5 & 6 Wm. IV. c. 50, s. 6, L. and C. were proposed and seconded. The majority of the ratepayers present, counting each as a single vote, were in favour of L.; but it was suggested that the votes ought to be counted by giving each ratepayer the plurality of votes to which he was entitled, and, so counting the votes, the majority was in favour of C. A poll was then demanded on behalf of L., and a poll was appointed to be taken on the 28th February, between ten and two o'clock, at the room in which the vestry was then being held. On the 28th, several ratepayers went to the room to vote; but in consequence of a notice that C. declined to stand, no one went into the room, and no poll whatever was taken. C. was afterwards informed by the chairman of the meeting that he was elected by the votes of the meeting, and the chairman gave him a certificate of his election. Under these circumstances, the Court held that C. was not elected, and that, no poll having been taken after it had been duly demanded, the election was void.—*Reg. v. Cooper*, L. R. 5 Q. B. 457, 39 L. J. Q. B. 273, 35 J. P. 37.

Quo warranto will lie for the office of waywarden; and though the district for which he acts be not defined by a known "legal boundary," he must be elected by the inhabitants of that part, and not by those of the whole parish.—*Reg. v. Gascoign*, 29 J. P. 389. See also *Reg. v. Dix*, 30 J. P. 390.

Where the justices, by their final order, fixed the first day of meeting of the Highway Board for the Thursday after the 25th March, and no day was specially named for the election of waywardens, and according to the custom of the parishes in the district it had been usual to elect highway surveyors on the 25th March, or within two or three days thereafter, it was held that the order was not bad because it did not provide for the fourteen days elapsing after the 25th March, but provided only for five clear days; though it would have been better to give more time. It was further held that where orders of justices must be objected to within three months, it is sufficient to obtain a rule for a *ceteriorari* within that time.—*Reg. v. Lindsey* 77. 12 Jur. (N. S.) 314, 6 B. & S. 892, 13 L. T. (N. S.) 524, 35 L. J. M. C. 90.

places where no surveyor or surveyors were elected previously to the place forming part of a highway district. (p)

A waywarden shall continue to act until his successor is appointed, and shall be re-eligible. (q)

CONSEQUENCES OF FORMATION OF HIGHWAY DISTRICT.

Consequences of Establishment of Highway Board.

11. At and after the first meeting in any highway district of the Board of such district the following consequences shall ensue:

All such property, real and personal, including all interests, easements, and rights in, to, and out of property, real and personal, and including things in action, as belong to or are vested in, or would but for this Act have belonged to or been vested in, any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the Highway Board of that district for all the estate and interest of such surveyor or surveyors as aforesaid, but subject to all debts and liabilities affecting the same: (r)

All debts and liabilities incurred in respect of any property transferred to the Highway Board may be enforced against the Board to the extent of the property transferred: (s)

(p) Before making their provisional order it will therefore be necessary that the justices should ascertain whether a surveyor of highways had previously been elected for any parish proposed to be included in the highway district. See 27 & 28 Vict. c. 101, s. 7, last subdivision and note thereon; and also the last clause of s. 31 of the same Act.

(q) i.e., for election. Whenever default is made in the election, the former waywarden will continue in office unless the justices make another appointment in the manner above mentioned.

(r) Under this provision all waste land allotted to parishes within the district for the repair of the highways, as well as all other property vested in the surveyor, under 5 & 6 Wm. IV. c. 50, s. 41, pass and become vested in the Highway Board, who will have the same powers with respect to the sale of lands from which the materials have been exhausted as surveyors have under the 5 & 6 Wm. IV. c. 50, s. 48, and 8 & 9 Vict. c. 71, s. 1. See Glen's "Treatise on the Law of Highways," second edition.

Further with reference to this section, see *Wrexham v. Hardcastle*, 19 C. B. 177, post, p. 81.

(s) This must mean debts and liabilities incurred by the surveyor;

All such powers, rights, duties, liabilities, capacities, and incapacities (except the power of making, assessing, and levying highway rates) as are vested in or attached to, or would but for this Act have become vested in or attached to, any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the Highway Board: (*t*)

All property by this Act transferred to the Board shall be held by them upon trust for the several parishes or places now maintaining their own highways within their district to which such property belongs, or for the benefit of which it was held previously to the formation of the district. (*u*)

APPOINTMENT OF OFFICERS.

Power to Highway Board to appoint Officers.

12. The Highway Board of a district shall, at their first

if the value of the property be insufficient to defray the debts or liabilities, it is difficult to see in what way they can be recovered or enforced after the surveyor has been superseded by the highway district, unless, indeed, he may have incurred personal liability in respect of them.

(*t*) As regards this provision, reference must be made to Glen's "Highway Laws," which treats very fully of the various powers and duties of surveyors of highways by 5 & 6 Wm. IV. c. 50, ss. 18 & 19. See also the powers given to Highway Boards as surveyors of the highways by this Act. As regards a waywarden contracting for the supply or cartage of materials within the parish for which he is waywarden, see 26 & 27 Vict. c. 61, and 27 & 28 Vict. c. 101, s. 20, *post*, p. 97.

(*u*) Therefore, all materials, tools, and implements provided for repairing the highways transferred to the Highway Boards by the Act, must be applied and used by the Board for the repair of the roads of the several parishes from the surveyors of which the same was transferred. See also 27 & 28 Vict. c. 101, *post*, as to the expenses of maintaining and keeping in repair the highways of each parish within the district.

A Highway Board passed a resolution that a certain path was a public way, and directed their surveyor to remove the locks from gates that had been placed across the path. An action having been brought for the trespass in removing the locks, it was held that the members of the Board who concurred in the resolution were personally liable, inasmuch as the act done was wholly beyond the competency of the Board, under 5 & 6 Wm. IV. c. 50, to perform, and that the surveyor was also liable as having actually committed the trespass complained of, although he committed it under the orders of the other defendants, professing to act as the Highway Board of the district.—*Mill v.*

meeting or at some adjournment thereof, by writing under their seal, appoint a treasurer, clerk, and district surveyor; (v) they may also at any meeting, if they think fit, appoint an assistant surveyor; (w) they may from time to time remove any of such officers, and appoint others in the room of such as may be so removed, or as may die or resign; (x) they may also, out of any moneys in their hands, pay such salaries as they think reasonable to the clerk and district and assistant surveyor, and to the treasurer, if they think necessary, (y) provided that before the treasurer enter upon his office the Board shall take sufficient security from him for the due performance of the duties of his office; (z) but no appointment, except the first, to any of the offices specified in this

Hawker and Others and Wickett, 30 L. T. (N. S.) 894, L. R. 9 Exch. 309.

(v) If the appointments be not made at the first meeting, and there should be no adjournment of the meeting, the power to appoint would seem to drop through. It is therefore important, if the Board are not prepared at the first meeting to make the whole of the appointments, that the meeting should not separate without its being adjourned to a future day. As to any default in the appointment of officers, see 27 & 28 Vict. c. 101, s. 45, *post*. By 27 & 28 Vict. c. 101, s. 30, the appointment of any officer may be made by a minute of the Board, signed by the chairman, and countersigned by the clerk of the Board. There is no exemption from stamp duty in the Highway Acts, 1862, 1864, and the Commissioners of Inland Revenue are understood to have expressed an opinion that the appointment of the officers under section 12 of 25 & 26 Vict. c. 61, will be liable to duty, under the head of "grant" in the schedule to the Stamp Act, upon the amount of the annual emolument; and, further, that the security to be given by the treasurer or any other officer will be liable to the duty of 2s. 6d. per cent. on the amount of the security, but not exceeding 35s. If, however, the appointment be made in the manner indicated in 27 & 28 Vict. c. 101, s. 30, it will not be liable to stamp duty. The Act gives no power to appoint two persons to act as joint clerks, or to appoint a firm of solicitors as clerks. It would seem, however, from section 15, *post*, that a deputy clerk may be appointed, or rather nominated, by the clerk, and "allowed" by the Board.

(w) The word "surveyor" may be interpreted in a plural sense, under 13 & 14 Vict. c. 21, s. 4.

(x) Any future appointment of clerk, it would seem, must be made under the seal of the Board, notwithstanding 27 & 28 Vict. c. 101, s. 30, as in his case there will be no clerk to countersign the minute of appointment.

(y) See, however, the provision in 27 & 28 Vict. c. 101, s. 45, as to the salaries of officers appointed by the justices.

(z) The nature of the security to be taken from their treasurer, it will be perceived, is left to the discretion of the Highway Board.

section, shall be made unless notice in writing has been sent to every member of the Board. (a)

Two Offices not to be held by the same Person.

13. Not more than one office of treasurer, clerk, and district or assistant surveyor of the same Highway Board shall be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person accepts or holds the office of treasurer, clerk, or district or assistant surveyor, contrary to this provision, he shall be liable to a penalty not exceeding £50. (b)

Duties of Treasurer.

14. The treasurer of each Highway Board shall receive and hold, to the account of such Board, all moneys paid to or for the use of such Board, and shall make payments thereout under orders of such Board, and shall once in every three months, on or at such days and times as the

(a) The first appointment of an assistant surveyor may be made without notice, as well as the first appointment to any of the other offices; and the section does not in terms enable the Board to appoint more than one district surveyor and assistant surveyor, however large the district may be; but although the term "assistant surveyor" is used in the singular number only, the 13 & 14 Vict. c. 21, s. 4, enables it to be read in a plural sense, and consequently more than one assistant surveyor may be appointed. According to Parliamentary Paper, No. 222, Session 1864, the following question was submitted by a Highway Board to Mr. Manisty, Q.C.: "Is it legal for the Board to pay inspectors to overlook works or contracts, their wages or salary being made a proportionable charge on the parishes within which he acts as such inspector?" Mr. Manisty's answer was: "I am of opinion that the Board may legally employ such number of persons as they deem necessary for the proper performance of the work which has to be done in each parish or place maintaining its own highways. It is immaterial by what name such persons are called (be it that of inspector, overseer, foreman, or otherwise); but wages should be paid for their services by the respective parishes or places in which their services are rendered. I do not think it matters whether the wages so paid are measured by an appointed salary or in any other way, so long as each parish or place pays for the services rendered in it."

(b) This section means that each of the several offices specified shall be held by distinct persons, none of whom shall be in partnership one with the other, nor be connected with each other in the relation of employer, &c.

Board may direct, or oftener if required by the Board, make up an account of all moneys received and paid by him, and deliver the same to the clerk of the Board.

Duties of Clerk.

15. The clerk of every Highway Board shall in person, or by such deputy as may be allowed by such Board, attend all meetings of the Board, and shall conduct the correspondence thereof, and enter and keep, in books to be provided for the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of such Board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the Board may direct. (c)

Duties of District Surveyor.

16. The district surveyor shall act as the agent of the Board in carrying into effect all the works and performing all the duties of this Act required to be carried into effect or to be performed by the Board, and he shall in all respects conform to the orders of the Board in the execution of his duties, and the assistant overseer, if any, shall perform such duties as the Board may require, under the direction of the district surveyor.

WORKS AND DUTIES OF BOARD.

Board to Maintain Highways.

17. The Highway Board shall maintain in good repair the highways within their district, and shall, subject to the

(c) The Act omits to give the Highway Board express authority to provide a board-room for their meetings, or offices for the transaction of the business of the district. The clerk, it is presumed, will provide his own office in consideration of his salary; and the use of a board-room may be paid for under s. 20, *post*, and charged to the district fund as a necessary expense incurred by the Board for the common use or benefit of the several parishes within the district. It seems doubtful to what extent the powers given to Highway Boards as surveyors of the highways by 5 & 6 Wm. IV. c. 50, ss. 18 & 19, will be transferred to the new Highway Boards, especially the power given by the latter section as to the purchase of ground or premises for the keeping of the implements and materials necessary for the repair of the highways, or for preparing the same. As to the Deputy Clerk, see note to section 12, *ante*, p. 61.

provisions of this Act, as respects the highways in each parish within their district, perform the same duties, have the same powers, and be liable to the same legal proceedings as the surveyor of such parish would have performed, had, and been liable to if this Act had not passed. (d) It shall be the duty of the district surveyor to submit to the Board at their first meeting in every year, (e) an estimate of the expenses likely to be incurred during the ensuing year (f) for maintaining and keeping in repair the highways in each parish within the district of the Board, and to deliver a copy of such estimate as approved or modified by the Board so far as the same relates to each parish to the waywarden of such parish. (g)

(d) The duties and powers of the surveyor in relation to the management of the highways will be found fully set out in Glen's "Highway Laws."

(e) The first meeting in every year will be that which is held after the annual election of waywardens. See section 10, *ante*, and note thereon.

(f) That is to say, during the year which is to follow such first meeting of the board, or which shall have then commenced.

By 27 & 28 Vict. c. 101, s. 36, *post*, p. 112, the accounts of every Highway Board shall be made up and balanced to the 31st December in every year.

(g) A Highway Board may make and enforce an agreement with a gas company that they may dig up highways for the purpose of laying down gas pipes, and pay at per yard for the surface broken. Declaration—that it was agreed between plaintiffs (a highway board) and defendants, that if plaintiffs would allow defendants to open a highway within the jurisdiction of plaintiffs, defendants would make good the surface and pay one shilling per yard of the highway opened, that the licence was given and acted upon, and neither the surface made good by the defendants, nor the one shilling per yard paid:—Held, on demurrer, a good declaration; that the forbearance of plaintiffs to interfere, and their submission to the risk of having to repair the highway themselves, amounted each of them to a sufficient consideration for the agreement, and, further, that the consideration was not illegal, as the performance of the agreement by defendants did not necessarily involve a nuisance to the highway.—*Edgware Highway Board v. Harrow District Gas Company*, 44 L. J. Q. B. 1, 31 L. T. (N. S.) 402. Where a person lays down water pipes under a highway without the permission of the owners of the soil of the highway, a court of equity will, at the instance of one of such owners, grant a mandatory injunction restraining the trespasser from allowing the pipes to remain there, although the work had been completed before the filing of the bill, and will not require the plaintiff in the first instance to establish his right by an action at law.—*Goodson v. Richardson*, 30 L. T. (N. S.) 142.

Proceedings where Roads are out of Repair.

18. Where complaint is made to any justice of the peace that any highway within the jurisdiction of the Highway Board is out of repair, (h) the justice shall issue two summonses, the one addressed to the Highway Board and the other to the waywarden of the parish liable to the repair of such highway, (i) requiring such Board and waywarden to appear before the justices at some petty sessions, in the

(h) Where, under 25 and 26 Vict. c. 61, s. 18, the waywarden appears before justices and denies that the road is a highway, and that point is *bond fide* disputed, and the justices overrule the objection to their jurisdiction, the Court of Queen's Bench will review the finding of the justices; and if satisfied that their decision was wrong on the question of highway or no highway, the Court will quash the order of justices directing the Highway Board to repair the highway.—*Reg. v. Odell, 34 J. P. 534;* and see *Reg. v. Farrar, post, p. 69.*

(i) Doubts having arisen as to whether Highway Boards were liable to contribute to the repair of turnpike roads under 4 & 5 Vict. c. 59, and the continuing Acts, it is enacted by 26 & 27 Vict. c. 94, s. 1, as follows:—“1. Whereas doubts are entertained whether Highway Boards established under the Act of the Session of the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter sixty-one, are liable to contribute to the repair of turnpike roads in pursuance of the Act of the Session of the fourth and fifth years of the reign of her present Majesty, chapter fifty-nine, and the Acts continuing the same: Be it enacted, That where any turnpike road is situate in a parish that is included in a highway district, an order may be made on the Highway Board of the district to contribute to the repair of that road under the same circumstances under which an order for the same purpose may be made on the parish surveyor in pursuance of the said Act of the Session of the fourth and fifth years of the reign of her present Majesty, chapter fifty-nine, as continued as aforesaid; and for the purposes of the said last-mentioned Act, the Highway Board shall be deemed to be substituted for the parish surveyor, and any rate leviable in pursuance of a precept of the Board for the rate or assessment levied or to be levied by the said surveyor as in the said Act mentioned, and any moneys paid by the Board for the purposes or in pursuance of the last-mentioned Act, shall be deemed to be expenses incurred by the Board in respect of the repair of highways in the parish in which the turnpike road is situate for which contribution is required, and ‘parish,’ as used in this section, shall mean any place in a highway district that returns a waywarden or waywardens to the Board of that district; and it is hereby declared that ‘Local Act,’ as used in the seventh section of the said Act of the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter sixty-one, does not include Turnpike Acts.” The words of the above section in italics are repealed by 34 & 35 Vict. c. 115, s. 15, *post,* and further provision made. Now, by 35 & 36 Vict. c. 85, s. 14, *post,* p. 146, a Highway Board may voluntarily repair turnpike roads at the cost of the district funds.

summons mentioned, to be held in the division where such highway is situate ; (*j*) and at such petty sessions, unless the Board undertake to repair the road to the satisfaction of the justices, or unless the waywarden deny the liability of the parish to repair, (*k*) the justices shall direct the Board to ap-

By 30 & 31 Vict. c. 121, s. 3, the trustees or commissioners of a turnpike road which shall hereafter become an ordinary highway shall, as soon as may be after the expiration of their trust, distribute the balance of any moneys remaining in their hands amongst the parishes upon which will fall the liability to repair the roads of such trust in proportion to the mileage of such roads in each parish, or, if such road shall be situated in any highway district or highway districts, then the trustees shall pay over such balance to the treasurer or treasurers of such highway district or highway districts in proportion to the mileage of such road in each such highway district, to be distributed in manner aforesaid.

The Turnpike Acts Continuance Act, 28 & 29 Vict. c. 107, enacts (s. 2) that the sections relating to encroachments on turnpike roads contained in the 3 Geo. IV., c. 126 (*i.e.*, sections 118 & 124), "shall continue in force in relation to any road which, having been a turnpike road, may at any time after the passing of this Act become an ordinary highway, in the same manner as if such road had continued to be a turnpike road ; and in the construction of the said section the Highway Board shall be deemed to be the trustees or commissioners where the road is within the jurisdiction of a Highway Board, and in other cases the surveyor or other local authority having the care of the road shall be deemed to be such trustees or commissioners." By section 3 "it shall be the duty of the trustees or commissioners of a turnpike road that is about to become an ordinary highway to hold such meetings as may be necessary for the complete winding up of the affairs of their trust or commission, and any such meeting shall be legal if held at any time within two months after the time limited for the expiration of their trust or commission."

(*j*) By s. 38, *post*, no justice of the peace shall act as such in any matter in which he has already acted as a member of the Highway Board, and in which the decision of such Board is appealed against. As, however, proceedings under this section are not in the nature of an appeal against any decision of the Highway Board, it would seem that a justice who is a member of the Board is not disqualified from acting in proceedings to compel the repair of a highway within the district. It will be seen, s. 9, subsection 1, *ante*, that all justices acting for the county and residing within the district are members of the Highway Board ; and as the proceedings under s. 18 are to take place at the petty sessions held in the division where the highway which is out of repair is situated, it must necessarily follow that all the justices for the county acting at that petty sessions will be members of the Highway Board. But, now, see the provision in 27 & 28 Vict. c. 101, s. 46.

(*k*) Section 19 provides for the case in which the liability to repair is disputed. Under the 5 & 6 Wm. IV. c. 50, s. 95, the surveyor on behalf of the parish denied the duty or obligation to repair.

pear (*l*) at some subsequent petty sessions to be then named, and shall either appoint some competent person to view the highway, and to report to them on its state at such other petty sessions, or fix a day, previous to such petty sessions, at which two or more of such justices will themselves attend to view the highway.

At such last-mentioned petty sessions, if the justices are satisfied, either by the report of the person so appointed, or by such view as aforesaid, that the highway complained of is not in a state of complete repair, it shall be their duty to make an order on the Board limiting a time for the repair of the highway complained of; (*m*) and if such highway is not put in complete and effectual repair by the time limited in the order, the justices in petty sessions shall appoint some person to put the highway into repair, and shall by order direct that the expenses of making such repairs, together with a reasonable remuneration to the person appointed for superintending such repairs, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Board; and any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, in the same manner as if it were an order of general or quarter sessions, and be enforced accordingly. (*n*)

All expenses so directed to be paid by the Board in respect of the repairs of any highway shall be deemed to be expenses incurred by the Board in repairing such highway, and shall be recovered accordingly.

The Highway Board may appear before the justices at petty sessions by their district surveyor or clerk, or any member of the Board. (*o*)

(*l*) By s. 9, subsection 2, *ante*, the Highway Board is incorporated, but the latter part of the present section enables the Board to appear before the justices at petty sessions by their district surveyor or clerk, or any member of the Board.

(*m*) The justices must be *satisfied* either upon their own view, or upon the report of their viewer, that the highway is not in a state of complete repair. They are not bound to act upon the report of their viewer, but may act upon their own discretion in making an order on the Highway Board.—*Reg. v. Wilts FF.*, 8 Dowl. P. C. 717. S. C. nom. *Reg. v. Earl Radnor*, 4 Jur. 460.

(*n*) That is by *certiorari*, which must be applied for within six months after the date of the order.

(*o*) Under s. 18 of 25 & 26 Vict. c. 61, two summonses are to be

When Obligation to repair is disputed.

19. When, on the hearing of any such summons respecting the repair of any highway, the liability to repair is denied by the waywarden on behalf of his parish, or by any party charged therewith, (p) the justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway is situate, against the inhabitants of the parish, or the party charged therewith, for suffering and permitting the said highway to be out of repair; and the costs of such prosecution shall be paid by such party to the proceedings as the court before whom the case is tried shall direct, and if directed to be paid by the parish shall be deemed to be expenses incurred by such parish in keeping its highways in repair, and shall be paid accordingly. (q)

issued; one to the Highway Board, and one to the waywarden of the parish, requiring *both* to appear at the sessions. The Board will appear by their district surveyor, clerk, or by any member of the Board; and the waywarden must appear to represent the parish, though it seems that he may appear for the Board also. However, when the parties are before the justices under s. 18, the Board must undertake to repair the road, or submit to proceedings under the section. Under ss. 18 & 19 it is the waywarden alone that can deny the liability of the parish to repair—the Board cannot do so. If the waywarden does not deny the liability of the parish, and the Board will not undertake to repair, then the justices are to proceed as directed by s. 18.

(p) As in the case of a highway repairable *ratione tenure*.

(q) As regards the enforcement by indictment of the repair of a highway, see Glen's "Highway Laws," second edition. With reference to this section, *Reg. v. James*, 32 L. J. M. C. 211, 3 B. and S. 901, 9 Jur. (N. S.) 1126, may be referred to. In that case, where, on the hearing of a summons under s. 40 of the South Wales Highway Act, 23 & 24 Vict. c. 68, against the district surveyor of highways for non-repair of a highway in a parish, the liability to repair is disputed on behalf of the parish, the justices have power to direct an indictment to be preferred under s. 95 of 5 & 6 Wm. IV. c. 50. It will be seen that the 27 & 28 Vict. c. 101, ss. 38-43, *post*, provides for an appeal against the order of the Highway Board to repair a highway not repairable by the parish.

The Court of Queen's Bench have held that the power of justices under s. 19 of 25 & 26 Vict. c. 61 to direct a bill of indictment to be preferred for the non-repair of a highway only applies to cases where the liability to repair an *admitted* highway is disputed; and therefore where,

EXPENSES. (r)

20. Expenses, how charged.
21. Mode of defraying expenses.
22. Provision where parish as defined by Act not co-extensive with parish maintaining its own poor.
23. Power of overseers, &c., to levy rates for making payments to Highway Board.
24. Mode of enforcing payments to Highway Boards.

ACCOUNTS. (s)

25. Accounts to be made up to 25th March, and statement to be published.
26. Power to appeal in respect of account of Board.

Clerk of Highway Board to transmit Statement to Secretary of State (t)—Penalty for Neglect.

27. The clerk to every Highway Board shall, within such thirty days after the said audit, (u) transmit such statement to one of Her Majesty's principal Secretaries of State; (t) and any such clerk who shall not within the time aforesaid transmit the said statement to the said Secretary of State (t) shall for every such offence, upon a summary conviction for

upon the hearing of a summons for the non-repair of a highway, the waywarden of the parish admitted that it was out of repair, and did not dispute the liability of the parish to repair it, if it was in fact a common highway, while denial was made *bond fide*, and the justices therefore refused to order a bill of indictment to be prepared as having no jurisdiction to do so, the Court held that the justices were right. The expression in s. 19 *supra*, "when the liability to repair is denied," is to bear the same construction as the expression "if the duty or obligation of such repairs is denied" in s. 95 of 5 & 6 Wm. IV. c. 50.—*Reg. v. Farrar*, 1 L. R. Q. B. 558, 7 B. & S. 554, 35 L. J. M. C. 210, 14 L. T. (N. S.) 575. In the case of *Reg. v. Buckland*, 34 L. J. M. C. 178, it was held that the court had no power to order costs where, on the trial of an indictment ordered by justices under 25 & 26 Vict. c. 61, s. 19, for the non-repair of an alleged highway, the road was found not to be a highway.

(r) Sections 20-24 of this Act are repealed by 27 & 28 Vict. c. 101, s. 32, *post*, and further provisions are thereby made.

(s) Sections 25, 26, & 30 of this Act are repealed by 27 & 28 Vict. c. 101, s. 36.

(t) Now the Local Government Board. See 35 & 36 Vict. c. 79, s. 36, *post*, p. 145.

(u) See 27 & 28 Vict. c. 101, s. 36, and notes thereon.

the same before two justices of the peace, be liable to a penalty not exceeding £10.

Abstract of Statements to be laid before Parliament.

28. The *Secretary of State* (v) shall cause the statement so transmitted to be extracted, and the abstracts thereof to be laid before both Houses of Parliament, with the other statements in relation to highways required to be abstracted and laid before Parliament by the Act of the session holden in the twelfth and thirteenth years of Her Majesty, chapter thirty-five. (w)

Secretary of State (v) may cause Form of Statement to be prepared.

29. It shall be lawful for one of Her Majesty's principal *Secretaries of State* (v) to cause to be prepared such forms for such statement as he may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the said Act of the twelfth and thirteenth years of Her Majesty, but no statement shall be transmitted under that Act concerning parishes wholly within a highway district under this Act. (x)

30. *Quarterly account to be sent to overseers.* (y)

Officers appointed by Highway Board to account to them when required.

31. All officers appointed by the Highway Board shall, as often as required by them, render to them or to such persons as they appoint a true, exact, and perfect account in writing under their respective hands, with the proper vouchers, of all moneys which they may respectively to the time of rendering such accounts have received and disbursed on account or by reason of their respective offices; and in case any money so received by any such officer remains in his hands the same shall be paid to the Board, or to such person or persons as they in writing under their hands empower to receive the same; and if any officer refuses or

(v) Now the Local Government Board. See 25 & 26 Vict. c. 79, s. 36, *post*, p. 145.

(w) With respect to these statutes, see Glen's "Highway Laws," second edition.

(x) This section is similar to s. 31 of the South Wales Highway Act, 23 & 24 Vict. c. 68, in Glen's "Highway Laws."

(y) Repealed by 27 & 28 Vict. c. 101, s. 36, *post*.

wilfully neglects to render and give such account, or to deliver up such vouchers, or for the space of fourteen days after being thereunto required by the Board refuses or wilfully neglects to give up to them or to such person or persons as they appoint all books, papers, writings, tools, and things in his hands, custody, or power relating to the execution of his office, it shall be lawful for any justice of the peace for the county where the officer so making default is or resides, upon application made to him for that purpose by or on behalf of the Board, to make inquiry of and concerning any such default as aforesaid in a summary way, as well by the confession of the party as by the testimony of any creditable witness or witnesses upon oath, and by warrant under his hand and seal to cause such money as may appear to him to be due and unpaid to be levied by distress and sale of the goods and chattels of such officer, rendering to him the overplus (if any) on demand, after payment of the money remaining due and deducting the charges and expenses of making such distress and sale; and if sufficient distress cannot be found, or if it appears to any such justice in manner aforesaid that any such officer has refused or wilfully neglected to give such account, or to deliver up all books, papers, writings, tools, matters, and things in his custody or power relating to the execution of his office, the justice shall commit him to the house of correction or common gaol of the county where such offender is or resides, there to remain without bail until he gives a true and perfect account and verifies the same in manner aforesaid, and produces and delivers up the vouchers relating thereto, and pays the money (if any) remaining in his hands as aforesaid according to the direction of the Board, or has compounded with the Board for such money and paid such composition (which composition the Board are hereby empowered to make and receive), or until he delivers up such books, papers, and writings, tools, matters, and things as aforesaid, or has given satisfaction to the Board concerning the same; but no officer who may be committed on account of his not having sufficient goods and chattels as aforesaid shall be detained in prison by virtue of this Act for any longer time than six calendar months. (y)

(y) It will be observed that in this section the word "officers" is

SUPPLEMENTAL PROVISIONS.

Provision as to Extra-parochial Places.

32. Where in pursuance of an Act passed in the twentieth year of the reign of her present Majesty, chapter nineteen, and intituled "An Act for the Relief of the Poor in Extra-parochial Places," any place is declared to be a parish, or where overseers of the poor are appointed for any place, such place shall for the purposes of this Act be deemed to be a parish separately maintaining its own highways; and where in pursuance of the same Act any place is annexed to any adjoining parish, or to any district in which the relief of the poor is administered under a local Act, such place shall for the purposes of this Act be deemed to be annexed to such parish or district for the purposes of the maintenance of the highways, as well as for the purposes in the said Act mentioned. (z)

mentioned throughout. The object of the provision is difficult to understand; for if an officer do not conform to the requirements of the Highway Board, he may be at once removed by the Board under s. 12, *ante*. Doubtless the intention was to compel persons who may have ceased to be "officers" to render an account and to pay over and deliver up all money and other things belonging to the Highway Board in their possession; but how far the section will be applicable to a person who has ceased to be an "officer" is open to doubt. If the person proceeded against is still an "officer," no question can arise as to his accountability under the section.

(z) In Glen's "Highway Laws" the author pointed out that the Act 20 Vict. c. 19 parochialized places which were formerly extra-parochial, for the purposes of assessment to the poor rate, the relief of the poor, the county police or borough rate, the burial of the dead, the removal of nuisances, the registration of Parliamentary and municipal voters, and the registration of births and deaths; but that the Act did not in any way apply to highways; and he showed that the inhabitants of an extra-parochial place were not on any general principle of law liable to repair the highways within it. The Bill which has become the present Act, when originally introduced, was framed without any reference to the provisions of the 20 Vict. c. 19; but the author having called the attention of the Secretary of State to the difficulties which would most likely arise if the clause should pass as it was originally drawn, the present clause, after a conference at the Home Office on the subject, was substituted. The first part of the section refers to s. 1 of the 20 Vict. c. 19, and the latter part to ss. 4 and 8 of that Act. Further, with regard to this section, see 27 & 28 Vict. c. 101, s. 9, and note thereon.

Provision for outlying Part of Parishes.

33. Where part of a parish is not contiguous to the parish of which it is a part, such outlying part may at the discretion of the justices be annexed to a district, and, when so annexed, it shall, for all the purposes of the Highways Acts, be deemed to be a parish separately maintaining its own highways. (a)

Expenses of repair of Highways may be recovered from Party liable to repair ratione tenuræ.

34. Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, *shall be adjudged in the manner provided by the principal Act to be out of repair,* (b) the Highway Board of the district in which such highway is situate may, if they see fit, direct their surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid ; and it shall be lawful for any justice, upon the application of any person authorized in this behalf by the Highway Board, to summon the party liable to pay such expenses to appear before two justices at a time and place to be named in such summons, and upon the appearance of the parties or in the absence of either of them, it shall be lawful for such justices to hear and determine the matter, and make such order, as well as to costs or otherwise, as to them may seem just. (c)

(a) When or how the justices are to exercise their "discretion" under this section is not apparent. Probably they will do so when they form the highway district in the manner provided for by ss. 5, 6, *ante*. If, however, they do not then exercise their discretion, it is difficult to see when or in what way they are to do so. However, whenever the discretion is exercised, the outlying part of the parish will become a separate highway parish ; and in that case the waywarden will have to levy a highway rate in it ; see 27 & 28 Vict. c. 101, s. 33, *post*, p. 107. If the outlying part of a parish be not dealt with by the justices under this section, it will remain as before an outlying part of the mother parish.

(b) The words in this section between asterisks shall be construed as if, instead of those words, the following words were substituted :— "Shall be adjudged in manner provided by the Highway Act, 1862, to be out of repair ;" see 27 & 28 Vict. c. 101, s. 23. As regards the provisions of the Highway Act, 1862, on this point, see s. 18, *ante*.

(c) This section is similar in its provisions to the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 36 ; see also 5 & 6 Wm. IV. c. 50, s. 62, in Glen's "Highway Laws."

Highways repairable ratione tenuræ may be made repairable by the Parish.

35. Where any person or corporation is liable, by reason of tenure of lands or otherwise, to repair any highway situate in a highway district, the person or corporation (*d*) so liable may apply to any justice of the peace for the purpose of making such highway a highway to be repaired and maintained by the parish in which the same is situate ; and such justice shall thereupon issue summonses requiring the waywarden of such parish, the district surveyor, and the party so liable to repair such highway as aforesaid, to appear before two or more justices in petty sessions assembled, and the justices of such petty sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an order under their hands that such highway shall thereafter be a highway to be thereafter repaired and maintained by the parish, and shall in such order fix a certain sum to be paid by such person or corporation to the Highway Board of the district, in full discharge of all claims thereafter in respect of the repair and maintenance of such highway ; and in default of payment of such sum the Board may proceed for the recovery thereof in the same manner as for the recovery of penalties or forfeitures recoverable under this Act ; Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such highway exceeds 50*l.*, the same, when received, shall be invested in the name of the Highway Board of the district in some public Government securities, and the interest and dividends arising therefrom shall be applied by such Board towards the repair and maintenance of the highways within the parish in which such highway is situate ; but when such sum does not exceed 50*l.* the same or any part thereof, at the discretion of such Highway Board, shall from time to time be applied by such Board towards the repair and maintenance of the highways within such parish ; Provided that any person aggrieved by any order of justices made in pursuance of this section may appeal to a court of general or quarter sessions holden within four months from the date of such order ; but no such

(*d*) Or the Highway Board, see 27 & 28 Vict. c. 101, s. 24

appeal shall be entertained unless the appellant has given to the other party to the case a notice in writing of such appeal, and of the matter thereof, within fourteen days after such order, and seven clear days at the least before such sessions, and has entered into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as may be by the court awarded ; and upon such notice being given, and such recognizance being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order thereon, with or without costs to either party, as to the court may seem meet :

From and after the making of such order by the justices, or by the court on appeal, as the case may require, such highway shall be repaired in like manner and at the like expense as highways which a parish is liable to repair. (e)

Provision as to Roads laid out.

36. Where the inhabitants of any parish are desirous of undertaking the repair and maintenance of any driftway, (f) or any private carriage or occupation road, within their parish, in return for the use thereof, the district surveyor may, at the request of the inhabitants of such parish assembled in a vestry duly convened for the purpose, and with the consent in writing of the owner and the occupier of every part thereof, apply to the justices in petty sessions to declare such driftway or road to be a public highway to be repaired at the expense of the parish ; and upon such application being made it shall be lawful for the justices to declare the same to be a public carriage road to be repaired at the expense of the parish. (g)

(e) With reference to the provisions of this section, see Glen's "Highway Laws," second edition, and 5 & 6 Wm. IV. c. 50, s. 62, and 23 & 24 Vict. c. 60, s. 37. Note, however, the limitation in these two Acts as to the amounts therein mentioned—namely, £100 ; in the present Act, the limitation is £50 only.

(f) A "driftway" is a way which the public have a right to use either on foot or horseback, and is called a pack and prime, or drift, or bridleway.

(g) This section will enable the inhabitants of any parish (with the consent of the owners and occupiers), at their joint charge, to repair public footpaths and other occupation roads within the parish as well

Surveyor of Highway Board exempted from Turnpike Tolls.

37. No toll shall be demanded by virtue of any Act of Parliament on any turnpike road from the surveyor of a Highway Board when executing or proceeding to execute his duties as such surveyor, and all provisions applicable to the exemptions in the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, shall apply to the case of the exemptions conferred by this enactment. (h)

Limiting Jurisdiction of Justices.

38. No justice of the peace shall act as such in any matter in which he has already acted as a member of the Highway Board, and in which the decision of such Board is appealed against. (i)

Power to alter Highway Districts.

39. Any highway district formed under this Act may from time to time be altered by the addition of any parishes in the same or in any adjoining county, (j) or the subtraction therefrom of any parishes, and new highway districts may be formed by the union of any existing highway districts in

as private carriage roads to be made public highways. When the justices "declare" any such road to be a public carriage road, they should do so by a declaratory order, copies or duplicates of which should be served upon the Highway Board of the district, as well as upon the owners and occupiers, and perhaps also upon the churchwardens and overseers of the parish, if it be a poor law parish, or upon the waywarden if it be a highway parish.

(k) The provisions of the General Turnpike Act, 3 Geo. IV. c. 126, here referred to, are those contained in ss. 26, 27, 28, and 32.

(l) Unless there be an appeal against the decision of the Highway Board, there is nothing in this section to prevent a justice who is a member of the Highway Board from acting as a justice in any matter in which he may have already acted as a member of the Board. But see the new provision in 27 & 28 Vict. c. 101, s. 46, *post*. As regards notice of appeal to the quarter sessions, see 12 & 13 Vict. c. 45, s. 1.

(j) i.e., in the same county in which the highway district is situated or in any adjoining county. The Act does not contemplate the original formation of highway districts containing parishes in adjoining counties; and this section only provides for the alteration of districts which have been previously formed by the addition of parishes in adjoining counties to such district, in cases in which, from practical experience, such a combination may appear to be desirable. Further, with regard to this section, see 27 & 28 Vict. c. 101, ss. 14, 15.

the same or in any adjoining county, or any parishes forming part of any existing highway districts, or any highway district may be dissolved; but any such alteration of existing districts, or formation of new districts, or dissolution of any district shall be made by provisional and final orders of the justices; and all the provisions of this Act with respect to the formation of highway districts and provisional and final orders of justices, and the notices to be given of and previously to the making of such orders, and all other proceedings relating to the formation of highway districts, shall, in so far as the same are applicable, extend to such alteration of existing or formation of new districts, or dissolution of districts, as is mentioned in this section; (k) and in addition thereto provision shall be made, if necessary, in any orders of justices made under this section for the adjustment of any matters of account arising between parishes or parts of districts in consequence of the exercise of the powers given by this section. Where any parish is added to or any district united with any district in another county, the final order of the justices of the county in which such parish or district is situate shall not be confirmed by them until they shall have received the approval of their provisional order for such addition or union from the justices of the county in which the district is situate to or with which such addition or union is to be made. Where any highway district is dissolved, or where any parish is excluded from any highway district, the highways in such district or parish must be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to the said highways, in the same manner as if such highways had never been included within the limits of a highway district. (l)

Provision in case of failure of Board to hold First Meeting.

40. If any Highway Board make default in holding its first meeting in pursuance of this Act, (m) such Board shall

(k) See *ante*, ss. 5, 6.

(l) By 27 & 28 Vict. c. 101, s. 14, the powers given by this section extend to the separation of any township, &c., which may have been consolidated by any previous order of justices. See the second clause of that section.

(m) That is, at the time and place fixed by the order of justices in

not thereupon become disqualified from acting, but the justices in general or quarter sessions shall, on the application of any person liable to pay highway rates within the district, make such order as they think fit for the holding of such Board at some other time, and any order so made shall be deemed to be an order capable of being removed into the Court of Queen's Bench, in pursuance of the Act passed in the session holden in the twelfth and thirteen years of the reign of her present Majesty, chapter forty-five, and may be enforced accordingly, (n) and the costs of any application to the court of quarter sessions in pursuance of this section shall be defrayed out of the district fund of the Board. (o)

Reservation of right to adopt Local Government Act.

41. Any parish or part of a parish included in a highway district may adopt the Local Government Act in the same manner and under the same circumstances in and under which it might have adopted the same if it had not been included in such district; and upon such adoption being made such parish or part of a parish shall cease to form part of such district, subject nevertheless to the payment of any contribution that may at the time of such adoption be due from such parish or part of a parish to the Highway Board. (p)

that behalf. See proceedings of Highway Board, *post*, p. 130, and 27 & 28 Vict. c. 101, s. 10, *post*.

(n) By s. 18 of 12 & 13 Vict. c. 45, an order of general or quarter sessions, "upon the application of any person entitled to enforce such order, and upon production of a copy of such order under the hand of the Clerk of the Peace or his deputy, *and upon proof of refusal or neglect to obey such an order*," may be removed into the Court of Queen's Bench; "and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench."

(o) If the costs be not paid by the Highway Board, *mandamus* would appear to be the proper remedy. The 26 Vict. c. 17, s. 2, as amended by 34 & 35 Vict. c. 70, restrains parishes the population of which is less than 3,000 from adopting the Local Government Act without the approval of the Local Government Board.

(p) With regard to the management of highways in districts under Local Boards of Health and Local Government Boards, see Glen's "Highway Laws," second edition, and also Glen's "Law of Public Health and Local Government," seventh edition. The "part of a parish" which does not adopt the Local Government Act will form by itself a separate highway parish within the meaning of s. 3, *ante*, and

APPLICATION OF PRINCIPAL ACT.

Construction of Principal Act and this Act.

42. The following regulations shall be observed with respect to the construction of the principal Act and this Act:—

1. This Act shall be construed as one with the principal Act so far as is consistent with the provisions of this Act.
2. The ninth section of the principal Act, whereby it is enacted that a surveyor may be appointed by the inhabitants of a parish with a salary, shall not apply to any parish within any district formed under this Act.
3. The tenth section of the principal Act, whereby it is enacted that the surveyor or surveyors at the time of passing his or their accounts as therein mentioned shall deliver to the justices a statement in writing of the name and residence of the person or persons appointed to succeed him or them as a surveyor or surveyors, shall not apply to any parish within any district formed under this Act.
4. The thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth sections of the principal Act, providing for the formation of parishes into districts, and the eighteenth and nineteenth sections of the principal Act, providing for the appointment of a Board in large parishes, shall not apply to any parish within any district formed under this Act. (q)
5. The penalty imposed by section twenty of the principal Act on the surveyor for neglect of duty shall not apply to a Highway Board constituted under this Act.
6. Any summons or notice, or any writ or any proceeding, at law or in equity, requiring to be served upon the Board, may be served by the same being left at or transmitted through the post in a prepaid letter

27 & 28 Vict. c. 101, s. 3, *post*. Further, with regard to this section, see *Driver v. Kingston Highway Board, post*, pp. 127-129.

(q) See note (y) to s. 7, *ante*, p. 51.

directed to the office of the Board, (r) or being given personally to the district surveyor or Clerk of the Board.

7. The thirty-fifth section of the principal Act, whereby it is provided that the ratepayers of any parish may divide amongst themselves the carriage of materials in manner therein mentioned, shall not apply to any parish within any district formed under this Act.
8. The thirty-ninth, fortieth, forty-third, forty-fourth, and forty-fifth sections of the principal Act relating to the accounts of surveyors shall not apply to the Highway Board of any district formed under this Act. (s)

Relative Duties of outgoing Surveyors and Highway Board.

43. On the formation of a highway district the following regulations shall be enacted with respect to the surveyors and the Highway Board:—

1. No surveyor shall be appointed under the principal Act for any parish within such district.
2. The outgoing surveyor of every parish within the district shall continue in office until seven days after the appointment of the district surveyor by the Highway Board of the district of such outgoing surveyor, and no longer; and he may recover any highway rate made and then remaining unpaid, in the same manner as if this Act had not been passed, (t) and the

(r) It will, however, be necessary to preserve evidence of the posting of the letter; and the most convenient mode of doing so will be to register at the post-office the letter containing the summons, &c., and for a third person to make an endorsement on the receipt given by the post-office authorities of the contents of the letter. As to the service of notices issued by the Highway Board, see 27 & 28 Vict. c. 101, s. 26, *post.*

(s) These several excepted provisions of the principal Act will be best understood by consulting the same in Glen's "Highway Laws."

(t) The meaning of this is that the surveyor after he is out of office shall continue to collect all arrears of highway rates remaining unpaid at the time of his going out of office; and, after reimbursing himself his expenses and discharging all outstanding debts, pay the balance to the treasurer of the Highway Board; for it has been held that it is the duty of outgoing surveyors of a parish to collect an outstanding highway rate when, during their term of office, the parish is incorporated into a new highway district under the 25 & 26 Vict. c. 61, and a Highway Board and district surveyor are appointed.—*Reg. v. Bluffield*, 28 J. P. 755, 11 L. T. (N. S.) 337. The

- money so recovered shall be applied, in the first place, in reimbursing any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction, and the surplus (if any) shall be paid by him to the treasurer of the Highway Board; and (u) he shall be entitled to receive from the Highway Board any sum [not exceeding five pounds] (v) which on the allowance of his accounts (w) shall be found to be due to him as such surveyor after the collection and expenditure of the whole of the highway rate made in such parish during the last year. (x)
3. The Highway Board shall, for all the purposes of the principal Act except that of levying rates, be deemed to be the successor in office of the surveyor of every parish within the district.

Provisions of principal Act to be applicable to Highways under local or personal Acts.

44. All the provisions of the principal Act for widening,

words "and then remaining unpaid," in s. 43, mean remaining unpaid at the end of seven days from the appointment of the district surveyor.—*Ibid.*

A.'s year of office as surveyor in the township of D. expired on the 25th March, 1863, when B. was appointed his successor pursuant to 5 & 6 Wm. IV. c. 50, and at the next special sessions (on 1st April) A. verified and passed his accounts, which showed a balance of £24 6s. 5d. in his hands due to the township. At this time there were debts owing by A. as such surveyor. On the 10th April a Highway Board was formed, under 25 & 26 Vict. c. 61, for a district which included the township of D., and on the 4th May the Highway Board appointed a district surveyor, B. never having acted as surveyor at all. Upon this state of circumstances, it was held, upon the construction of the 5 & 6 Wm. IV. c. 50, ss. 42, 43, and 25 & 26 Vict. c. 61, ss. 11, 43, that A. was an "outgoing surveyor," and as such liable to account to the Board, but that he was entitled to the same allowances for disbursements, &c., from the Board as he would have been entitled to if he had paid over the balance to his immediate successor in office.—*Wrexham v. Hardcastle*, 19 C. B. (N. S.) 177.

(u) The money so paid to the treasurer will be credited to the particular parish on account of which it is paid by the surveyor.

(v) By 27 & 28 Vict. c. 101, s. 28, this section is to be construed as if the words between brackets, "not exceeding five pounds," were omitted therefrom.

(w) By the justices, under 5 & 6 Wm. IV. c. 50, s. 44.

(x) When it is in contemplation to form a Highway Board under the

diverting, and stopping up highways (*y*) shall be applicable to all highways which now are or may hereafter be paved, repaired, or cleansed under or by virtue of any local or personal Act or Acts of Parliament, or which may be situate within the limits of any such Act or Acts, except highways which any railway company, or the owners, conservators, commissioners, trustees, or undertakers of any canal, river, or inland navigation, are liable by virtue of any Act of Parliament relating to such railway, canal, river, or inland navigation to make, maintain, repair, or cleanse.

Enabling Councils of certain Boroughs to adopt Parish Roads and Highways, and to apply Rates for their repair.

45. Whereas there are in certain boroughs in England and Wales roads and highways that are now and have heretofore been repaired by the inhabitants of the several parishes or townships within which such roads and highways are situated, and who also contribute and pay to the general rates levied for the repair of the public streets, roads, and highways maintained and kept in repair by the council of such boroughs, by reason whereof a great burden is imposed upon the ratepayers of the said parishes and townships; and it being doubtful whether the council of such boroughs have the power to adopt such parish roads and highways, or to apply the rates collected in such boroughs in repairing the same: Be it enacted, That it shall and may be lawful for the council of every such borough in England and Wales, upon the petition of the majority of the ratepayers of such parishes or townships present at a public meeting duly convened, (*z*) to adopt all or any of such parish roads and highways as the council shall in its discretion consider advisable, and to apply the rates levied and collected by the said council for the repair of the public streets, roads, and highways within such borough in repairing and maintaining

Act, the surveyors of the parishes proposed to be included in the district should take care that sufficient rates are made to cover all their probable expenditure before they go out of office.

(*y*) See Glen's "Highway Laws," second edition, for those provisions.

(*z*) This must be a public *vestry* meeting duly convened under the Act 58 Geo. III. c. 69, for the regulation of parish vestries, and the petition should be signed by the majority of the ratepayers present at the meeting.

such parish roads and highways: (a) Provided always, That it shall be competent for such council, previous to adopting such parish roads and highways, to require the provisions contained in any local Act applying to the public streets, roads, and highways of such borough to be complied with. (b)

District Highway Boards may permit Landowners to erect Fences without incurring liability to repair Highways.

46. No person through whose land a highway passes, which is to be repaired by the parish, shall become liable for the repair of such highway by erecting fences between such highway and the adjoining land, if such fences are erected with the consent in writing of the Highway Board of the district within which such highway is situate in the case of a place within the jurisdiction of a Highway Board, and in the case of any other place with the consent of the surveyor or other authority having jurisdiction over the highway. (c)

Recovery of Penalties.

47. All penalties under this Act, and all moneys recoverable as penalties, may be recovered summarily before any two or more justices in the manner directed by the Act of the session of the eleventh and twelfth years of her present Majesty, chapter forty-three, and any Act amending the same; (d) but where any sum adjudged to be paid under this Act in respect of such penalties or moneys exceeds five pounds, an appeal may be had by any person aggrieved to a court of general or quarter sessions in manner provided by the one hundred and tenth section of the Act passed in the session holden in the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-six, intituled

(a) The adoption should be by a resolution of the council, reciting the petition, duly entered on the minutes of their proceedings.

(b) As regards paving, &c. streets in municipal boroughs, see 5 & 6 Wm. IV. c. 76, s. 75, and the Local Acts specified in Schedule E of that Act.

(c) With reference to the provision in this section, see Glen's "Highway Laws," second edition. The fence when erected must not be within fifteen feet of the centre of the highway; see 5 & 6 Wm. IV. c. 50, s. 69; and it must not be on the highway.

(d) With regard to the recovery of penalties, see the third edition of Glen's "Jervis's Acts."

"An Act to Consolidate and Amend the Statute Law of England and Ireland relating to Larceny and other similar Offences." (c)

(c) Regarding appeals to the court of quarter sessions, the 24 & 25 Vict. c. 96, s. 110, enacts that any person aggrieved may appeal to the next court of general or quarter sessions, which shall be holden not less than twelve days after the day of conviction, for the county or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction and seven clear days at the least before such session, and shall also either remain in custody until the sessions, or shall enter into a recognizance with sufficient sureties before a justice of the peace conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; or, if such appeal shall be against any conviction whereby only a penalty or other sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal; and upon such notice being given and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal on the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where, after any such deposit shall have been made as aforesaid, the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where, after any such deposit, the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the Clerk of the Peace, or other proper officer, shall forthwith endorse on the conviction a memorandum that the same has been so quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

SCHEDULE. (f)

FORM (A).

NOTICE is hereby given, That at the court of general or quarter sessions to be held on the day of , a proposal will be made to divide the county of Lincoln into highway districts [or to divide the parts of Holland in the county of Lincoln into highway districts, or to constitute the county of Rutland a highway district, or to constitute the parishes of Alford, Castle Carey, and Lovington, in the county of Somerset, a highway district].

FORM (B).

WHEREAS at a court of general or quarter sessions, held on the day of last, a provisional order was made in the words following ; that is to say [here set out the provisional order].

Notice is hereby given, that the confirmation of the said provisional order by a final order will be taken into consideration by the justices at the court of general or quarter sessions to be held on the day of next.

(f) This schedule is repealed by 27 & 28 Vict. c. 101, s. 27, so far as relates to proceedings of Highway Boards, and another is substituted for it in the schedule to that Act.

THE HIGHWAY ACT, 1864.

27 and 28 Vict. cap. 101.

AN ACT TO AMEND THE ACT FOR THE BETTER MANAGEMENT OF HIGHWAYS IN ENGLAND. [29th July, 1864.]

WHEREAS it is expedient to amend an Act passed in the Session holden in the Twenty-fifth and Twenty-sixth Years of the Reign of Her present Majesty, Chapter Sixty-one, and intituled "An Act for the better Management of Highways, in England :" Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PRELIMINARY.

Short Titles of Highway Acts.

i. The Acts hereinafter mentioned may be cited for all purposes by the short titles following, that is to say :

The Act passed in the Session of the fifth and sixth years of the reign of King William the Fourth, Chapter Fifty, and intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," by the short title of the "Highway Act, 1835."

The said Act passed in the Session of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, Chapter Sixty-one, by the short title of the "Highway Act, 1862."

This Act by the short title of the "Highway Act, 1864."

All the above-mentioned Acts, and any Acts passed or to

be passed, (g) amending the same, shall be included under the short title of "The Highway Acts."

This Act shall be construed with 25 & 26 Vict. c. 61.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one (h) with the "Highway Act, 1862."

Definition of "Poor Law Parish," "Highway Parish," "Highway Rate," and "County."

3. "Poor Law Parish" shall mean a place that separately maintains its own poor:

"Highway Parish" (i) shall mean a place that after the constitution of a highway district separately maintains its own highways, and is entitled to return a waywarden or waywardens to the highway board of the district:

"Highway Rate" shall include any rate, whether poor rate or not, out of the produce of which moneys are payable in satisfaction of precepts of a highway board: (j)

"County" shall include any division of a county that has a separate county treasurer. (k)

AMENDMENTS AS TO ORDERS OF JUSTICES.

Amendment of Section 6 of Highway Act of 1862. (l)

4. Where more highway districts than one are comprised in any order of justices, whether provisional or final, and whether made before or after the passing of this Act, the formation of each of such districts is to be deemed independent of the formation of any other district, and the order shall for all purposes be construed and take effect as if a separate order had been made in respect of each district; and any variation in a provisional order altering the parishes in any one or more districts comprised in that order shall make that order provisional only as to the particular district or districts in which the alterations are made, and not as

(g) See also 25 & 26 Vict. c. 61, s. 4, *ante*, p. 46.

(h) That is, as one *Act*.

(i) See also the definition of the word "Parish" in 25 & 26 Vict. c. 61, s. 3, *ante*, p. 46; see also s. 5, *post*.

(j) See *post*, s. 33.

(k) With reference to the word "county" see 25 & 26 Vict. c. 61, s. 2, *ante*, p. 45.

(l) See *ante*, p. 48.

to any other district or districts included in the same order.

Certain Places to be deemed Places separately maintaining their own Highways.

5. Any parish, township, tithing, hamlet, or other place having a known legal boundary, (*m*) in which there are no highways repairable at the expense of the place, or in which the highways are repaired at the expense of any person, body politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever than out of a highway rate or other general rate, (*n*) shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways.

Where part of a parish is, in pursuance of the Local Government Act, 1858, Amendment Act, 1861, Section 9, treated as forming part of a district constituted under the Local Government Act, 1858, for all purposes connected with the repair of highways and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the Highway Act, 1862, and this Act, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district, without requiring the consent of the Local Board to be given. (*o*)

(*m*) In *Reg. v. Gascoigne*, 29 J. P. 389, it was held that though the district for which the waywarden acts be not defined by "a known legal boundary," he must be elected by the inhabitants of that part, and not by those of the whole parish.

(*n*) Query, does this mean a general rate under the Public Health Acts? There is no other general rate made for the repair of the highways than a highway rate in places not under the Public Health Acts. As a place such as that contemplated in this section would come within the definition of a "highway parish," it would be liable to the expenses specified in s. 32, *post*.

(*o*) The provision in the 24 & 25 Vict. c. 61, s. 9, here referred to, is as follows:—"Where part of a township or place not comprised within any district in which the Local Government Act, 1858, is in force, and which part is hereinafter referred to as 'the excluded part,' was, before the said Act came into force in such district, liable to contribute to the highway rates for such township or place, such excluded part shall, for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as if forming part of such district." According to the present Act such a place is "capable of being included in a highway district, without requiring the consent of the Local Board to be given." The latter words referring

Where the highways of one part of a parish are, in pursuance of a private (*p*) Act of Parliament, repairable out of a different rate from that out of which the highways of the other part are repairable, each of such parts shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways.

Part of s. 5 of Highway Act of 1862 repealed, and other provisions enacted.

6. There shall be repealed so much of the fifth section of the Highway Act, 1862, (*q*) as provides that, "when it is proposed that only part of a county shall be divided into a highway district, not less than two out of the five justices making such proposal shall be resident in the said district;" and in lieu thereof be it enacted, That when it is proposed that only part of a county is to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district or some part thereof is situate.

Amendment of s. 7 of Highway Act of 1862 as to combination of Townships, &c.

7. The power given by the seventh section of "The Highway Act, 1862," (*r*) of combining townships, tithings, hamlets, or places separately maintaining their own highways, and situate in a poor law parish, shall extend to combining any two or more of such townships, tithings, hamlets, or places, and any combination so formed shall for all the purposes of the Highway Acts be deemed to be a highway parish. (*s*)

Where a township, tithing, hamlet, or other place separately maintaining its own highways is situate in two or more poor law parishes, each part of such township, tithing,

to the consent of the "Local Board" (of the district) imply that the consent of the Local Board would otherwise have been necessary; but it is not so, for there is nothing in any of the Public Health Acts enabling them either to give or to withhold their consent.

(*p*) Probably a "Local and Personal" Act of Parliament is here intended.

(*q*) *Ante*, p. 48.

(*r*) *Ante*, p. 53.

(*s*) See note to the last part of 25 & 26 Vict. c. 61, s. 7, *ante*, p. 53.

hamlet, or other place may be combined with the parish in which that part is situate. (*t*)

The justices may, by their provisional and final order, declare that any poor law parish within their jurisdiction, or residue of a poor law parish, after excluding such part, if any, as is prohibited by the "Highway Act, 1862," either wholly or without the consent of the governing body, from being included in the highway district, (*u*) shall henceforward become a highway parish; and upon such declaration being made, such poor law parish, or residue of a poor law parish, shall thereafter be a highway parish entitled to return a waywarden or waywardens to the highway board of the district in which it is included; and no rate shall be separately levied for the maintenance of the highways, and no separate waywardens be elected in any township, tithing, hamlet, or other subdivision of such poor law parish or residue of a poor law parish.

Where, previously to the passing of the provisional order forming a highway district, no surveyors or waywardens have been elected within any highway parish in that district, and where the mode of electing a waywarden or waywardens in such parish is not provided by this Act or the "Highway Act, 1862," (*v*) the justices shall, by their provisional and final orders constituting the district, or by any subsequent provisional and final orders, make provisions for the annual election of a waywarden or waywardens for such parish. (*w*)

Provision for Places partly within and partly without a Borough.

8. Where a parish or place separately maintaining its own highways is situate partly within and partly without the limits of a borough, the justices may, by their provisional

(*t*) See note to the last part of 25 & 26 Vict. c. 61, s. 7. *ante*, p. 53.

(*u*) The part of the "Highway Act, 1862," which is here referred to is s. 7, "Secondly," *ante*, p. 52.

(*v*) See s. 11 of this Act and s. 10 of 25 & 26 Vict. c. 61.

(*w*) The nature of the provisions which the justices are to make do not appear to be indicated by the Act. Probably the justices will follow s. 10 of the 24 and 25 Vict. c. 61 in making those provisions, so that there may be uniformity of practice in all the highway parishes.

and final orders, include in a highway district the outlying part of such parish or place ; (x) and where the outlying part of a parish or place situate as aforesaid has been, previously to the passing of this Act, or may be hereafter, included in a highway district, each part of such parish or place shall for all the purposes of the Highway Acts be deemed to be a place separately maintaining its own highways ; and a waywarden or waywardens shall be elected by the ratepayers in each such part at such time and in such manner as may be provided by the said justices. (y)

Power of Justices as to Extra-parochial Places.

9. The justices in petty sessions may appoint overseers, or otherwise deal with any extra-parochial place with a view to constituting it a highway parish or part of a highway parish, in the same manner as the justices may deal with such place for the purpose of constituting it a place or part of a place maintaining its own poor, in pursuance of the powers for that purpose given by the Act of the twentieth year of the reign of her present Majesty, chapter nineteen. (z)

Part of s. 6 of Highway Act of 1862 as to Meeting of Board repealed, and other Provisions enacted.

10. The paragraph No. 5 in the sixth section of the "Highway Act, 1862," (a) shall be repealed, and in lieu thereof be it enacted.

(x) By 25 and 26 Vict. c. 61, s. 7 (secondly), the justices were precluded from including in any highway district any parish or place, or part of a parish or place, within the limits of a borough, without the consent, 1, of the council of the borough ; 2, of the vestry of the parish, or part of the parish, proposed to be included. But under this provision the justices can deal with the outlying part of any parish so situated without any such consents as were required by the former Act.

(y) As to the election of the waywarden in such case, see note to s. 7, last subdivision.

(z) The 31 & 32 Vict. c. 122, s. 27 enacts, with regard to extra-parochial places, that they shall, for all civil parochial purposes, be annexed to and incorporated with the next adjoining parish with which they have respectively the longest common boundary ; so also with regard to accretions from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of any river to the middle of the stream, that they shall be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins, in proportion to the extent of the common boundary.

(a) *Ante*, p. 50.

The first meeting of the Highway Board after the formation of a district shall be held at such time as may be appointed by the provisional or final order of the justices, so that the time appointed be not more than seven days after the expiration of the time limited by law for the election of waywardens, (b) or, in the case of a special day being appointed for such election as hereinafter mentioned, (c) be not more than twenty-one days after that day.

The day appointed for the first meeting of the Board shall for all the purposes of the Highway Acts be deemed to be the day of the formation of the district ; and the surveyor for the time being of every parish within the district shall continue in office until seven days after the appointment of the district surveyor, and no longer. (d)

Power to Justices to bring Highway Act into operation on a particular Day.

(11. In forming a highway district under the "Highway Act, 1862," the justices may, for the purpose of avoiding delay in bringing the Act into operation, appoint by their final order a day on which the first election of waywardens as members of the Highway Board is to take place in the district.

On the day appointed for the election, waywardens shall be elected in every parish in the district entitled to elect such officers by the same persons and in the same manner by and in which waywardens are elected under the "Highway Act, 1862," (e) and all the provisions of the Highway Acts relating to the qualifications of surveyors (f) or way-

(b) See 25 and 26 Vict. c. 61, s. 10, second subsection, and note thereon, *ante*, p. 57.

(c) See s. 11, *post*.

(d) By 25 and 26 Vict. c. 61, s. 12, the district surveyor is to be appointed at the first meeting of the Highway Board, or some adjournment thereof.

(e) As to the mode of election of waywardens, see 25 & 26 Vict. c. 61, s. 10, second subsection, and note thereon, *ante*, p. 57. By "such officers," "waywardens" are intended; and perhaps they are "officers" in the same sense that "overseers of the poor" are considered parish officers.

(f) By 5 & 6 Wm. IV. c. 50, s. 7, "Any person living within the parish, or any adjoining parish, and having an estate in houses, lands, tenements, or hereditaments lying within such parish, in his own right or in right of his wife, of the value of £10 by the year, or a personal

wardens, (g) and to the appointment of surveyors and waywardens by justices in the event of no election taking place, (h) shall apply accordingly; but the waywardens elected under this section shall continue in office only until the time at which the next annual election of surveyors would have taken place in the several parishes of the district if the same had not been constituted a highway district, and at that time new waywardens shall be elected in manner provided by the Highway Acts. (i)

Publication of Orders in Gazette made permissive.

12. No order of the justices forming a highway district shall be invalidated by reason of its not being published in the *London Gazette*; (j) and where any reference is made in any section of the "Highway Act, 1862," to the date of the publication in the Gazette of the order, (k) such section shall be construed as if the date of the making of the final order under which the district is formed were substituted for "the date of the publication in the Gazette of the order under which the district is formed;" and any copy of the provisional or final order of the justices forming a highway district,

estate of the value of £100 (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish, or within any adjoining parish) of the yearly value of £20, shall be eligible to be elected a surveyor for the purposes of this Act."

(g) As to the qualification of waywardens, see note to 25 & 26 Vict. c. 61, s. 10, second subdivision, *ante*, p. 57.

(h) By 5 & 6 Wm. IV. c. 50, s. 11, "In case it shall appear on oath to the justices at a special sessions for the highways, that the inhabitants of any parish have neglected or refused to nominate and elect a surveyor or surveyors in manner and for the purposes aforesaid, it shall and may be lawful for such justices, and they are hereby authorized and required by writing under their hands, at the next succeeding special sessions for the highways, to appoint any person whom they may think fit to be a surveyor for such parish till the annual meeting then next ensuing for the nomination of overseers, or for the election of surveyors as aforesaid, and with or without salary as to the said justices shall seem fit and proper." As to the Special Sessions, however, see s. 46, *post*.

(i) As to these two last provisions, see note to 25 & 26 Vict. c. 61, s. 10, second subsection, *ante*, p. 57.

(j) As to publication of the order in the *London Gazette*, see 25 & 26 Vict. c. 61, s. 6, subsection 6, *ante*, p. 50. The present provision will apply to past as well as to future orders of justices.

(k) See 25 & 26 Vict. c. 61, s. 8.

certified under the hand of the Clerk of the Peace to be a true copy, shall be receivable in all courts of justice and in all legal proceedings as evidence of the formation of the district and of the matters in the said order mentioned. (?)

As to Union of Parishes in different Counties.

13. Contiguous places (*m*) situate in different counties and places situate partly in one county and partly in another county or counties (*n*) shall, for the purpose of being united in one highway district, be deemed to be subject to the jurisdiction of the justices of any county, who may make a provisional and final order constituting them a highway district, in the same manner as if all such places or parts of places were situate in such last-mentioned county: subject to this proviso, that the provisional and final orders of the justices of the said county shall be of no validity unless provisional and final orders to the same effect are passed either concurrently with or subsequently to the first-mentioned

(*l*) Where a provisional order for forming a highway district constituted a certain township (*E*) and other parishes and places named therein a highway district, and directed that one waywarden should be elected for each of the said parishes, townships, and places, and the township (*E*) was divided into three hamlets, each of which maintained its own highways, which were not separately named in the order, it was held that the provisional order and the final order based on it were bad, as the first did not state whether any or what waywardens were to be elected for the three hamlets under 25 & 26 Vict. c. 61, s. 6, subsection 4.—*Reg. v. York. (W.R.) J.J. 34 L. J. M. C. 227, 12 L. T. (N. S.) 580, 29 J. P. 440.*

The borough of East Looe is an ancient borough having liberties and franchises, with charters containing non-intermittent clauses, but is not a borough within the exception in s. 2 of the 25 & 26 Vict. c. 61. It is wholly surrounded by the county of Cornwall, and maintains its own poor and highways; and it was held that the justices of the county might take the proper proceedings in quarter sessions for making it a part of a highway district, under the 25 & 26 Vict. c. 61, s. 5; and further, that they had jurisdiction to hear a complaint by the waywarden against the overseers of the poor of the borough for not paying to the treasurer of the highway board the sum ordered by the precept of the Board to be levied in the borough. It was also held that the following description of the borough, "The several parishes, townships, tithings, hamlets, or places of Liskeard parish . . . East Looe . . . shall be united . . ." in the order constituting the highway district, was not such an imperfect description as to vitiate the order.

—*Giles v. Glubb, 13 L. T. (N. S.) 526.*

(*m*) That is, contiguous highway parishes.

(*n*) See 25 & 26 Vict. c. 61, s. 8 (thirdly).

provisional and final orders by the justices of every other county in which any of the said places or parts of places are situate.

Amendment of s. 39 of Highway Act, 1862.

14. The approval of the justices of any county to any provisional order made by the justices of another county affecting any place in such first-mentioned county, in pursuance of the thirty-ninth section of the "Highway Act, 1862," (o) shall be testified by provisional and final orders of the justices of the said first-mentioned county.

The powers conferred on justices by the thirty-ninth section of the "Highway Act, 1862," shall be deemed to extend to the separation of any townships, tithings, hamlets, or places (p) separately maintaining their own highways which may have been consolidated by any previous order of the justices, and to an alteration in the number of waywardens of any parish. (q)

As to the Costs of Parishes applying to be removed from one District to another.

15. Where, after the formation of a highway district, an application is made by any parish in that district to any court of general or quarter sessions, praying that the said parish may be removed from that district, (r) all costs incidental to or consequential on such application and the removal of the said parish shall, unless the court otherwise directs, be paid by the parish that has made the application in such manner as the said court may direct. The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the highways of that parish. (s)

As to validity of Order of Justices.

16. No order of the justices forming a highway district,

(o) *Ante*, p. 76.

(p) Note the absence of the word "parishes" from this clause.

(q) The original number of waywardens will be stated in the provisional order, see 25 & 26 Vict. c. 61, s. 6, subsection 4. *Ante*, p. 49.

(r) This application will, pursuant to s. 14, *ante*, be made under 25 & 26 Vict. c. 61, s. 39.

(s) The costs will, consequently, be payable by the Highway Board, see ss. 32 & 33, *post*.

whether made before or after the passing of this Act, shall be void by reason that it includes in such district a place which the justices are not entitled to include under the provisions of this Act or the "Highways Act, 1862," or one of such Acts; and any order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county.

Extent of Powers of Justices.

17. All powers and jurisdictions vested in justices by the "Highway Act, 1862," and this Act, or either of such Acts, may from time to time be exercised in relation to highway districts, highway boards, and highway parishes already formed, as well as upon the occasion of forming new highway districts, boards, or parishes; and where an alteration is made in part only of a highway district the residue of that district shall not be affected thereby, but shall continue subject to the Highway Acts in the same manner as if no such alteration had been made.

Definition of "Provisional and Final Orders."

18. The expression "provisional and final order," as used in this Act, shall mean a provisional and final order passed and published in manner provided by this Act (*t*) and the "Highway Act, 1862," (*u*) with the necessary variations as to notices and otherwise.

MISCELLANEOUS AMENDMENTS.

Appointment and Vote of Waywardens.

19. Every waywarden, before taking his seat as a member of a Highway Board, shall produce (*v*) a certificate of his

(*t*) See section 12.

(*u*) See 25 & 26 Vict. c. 61, s. 6.

(*v*) The Act forgets to say to whom the certificate shall be produced. The waywarden should, however, take it with him to the first meeting of the Highway Board he attends after his election; and a fresh certificate will be requisite after each annual election or appointment.

having been duly elected or appointed a waywarden, and such certificate shall, in the case of an elected waywarden, be signed by the chairman of the vestry or other meeting at which he was elected; and in the case of a waywarden appointed by justices (*w*) be signed by the justices making the appointment.

Any waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden. (*x*)

Power to Waywardens to contract for supply or cartage of Materials.

20. Whereas doubts are entertained whether the forty-sixth section of the Highway Act of 1835 applies to a highway district: Be it enacted, That that section shall not apply to the Highway Board of any highway district or to any parish within any highway district. (*y*)

(*w*) As to the appointment of a waywarden by the justices, see s. 11, *ante*, and the notes thereon.

(*x*) But if he is chairman of the Board, he will have a second or casting vote on an equality of votes. See the first sch. (5), *post*.

(*y*) The provision of 5 & 6 Wm. IV. c. 50, which is here excepted, empowers surveyors of highways to contract for purchasing and carrying materials for repair of the highways, and prohibits them under a penalty from being concerned for their own benefit (unless under a licence from justices) in any contract, &c., in connection with the highways.

By 26 & 27 Vict. c. 61, reciting that whereas it is expedient that waywardens appointed under an Act passed in the last session of Parliament, intituled 'An Act for the better Management of Highways in England,' should be prevented from contracting for any works to be executed within their own districts, it is enacted—

"1. No such waywarden shall directly or indirectly, in his own name, or in the name of any other person or persons, contract for the repair of any road, or for any other work to be executed under the provisions of the said recited Act within the parish for which he is elected waywarden, or within any other parish in the same district, under the pain of forfeiting the sum of ten pounds, with full costs of suit, to any person or persons who shall sue for the same by action for debt in any county court within the jurisdiction of which the parish in which the roads to be repaired, or the other work so contracted for, is situate.

"2. It shall not be lawful for any Highway Board to pay knowingly for any repair or work so contracted for, and any money paid by any Board under any such contract shall be recoverable by them with full costs from the person or persons to whom the same shall have been paid, by action of debt in any of Her Majesty's Courts of Record at Westminster, if the same shall amount to above fifty pounds, or in any county court as aforesaid if below that amount, and the balance so

Notwithstanding anything contained in the Act of the Session of the Twenty-sixth and Twenty-seventh Years of the Reign of Her present Majesty, Chapter Sixty-one, (z) or in any other Act, (a) any waywarden may contract for the supply or cartage of materials within the parish for which he is waywarden, (b) with the licence of two justices assembled at petty sessions, such licence to be granted on the application of the Clerk of the Highway Board, who must be authorized to make such application by a resolution of his Board assembled at a meeting of which notice has been given. (d)

recovered, after paying all expenses, shall be placed to the credit of the district fund.

"3. This Act shall be construed with and held to be part of the said recited Act for the better management of highways in England."

It will be noticed that this enactment only goes to the prohibition of a waywarden contracting for the repair of roads or the execution of any other work connected with the highways within his parish or district; it does not restrain him from selling goods of any kind to the Highway Board for his own profit, nor does it appear to prohibit a waywarden from letting his teams to the Highway Board for the cartage of materials. The prohibition in the Highway Act, 5 & 6 Wm. IV. c. 50, s. 46, is against the surveyor, for his own profit, contracting or bargaining "for work or materials to be made, done, or provided upon, for, or on account of any of the highway or other works under his care or management."

It would seem that under this enactment the money paid by the Highway Board under a prohibited contract may be recovered by them from the contractor, whether the Highway Board paid the money "knowingly" or not.

By 33 & 34 Vict. c. 97, sch. (tit. agreement), agreements or contracts made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing highways are subject respectively to a stamp duty of sixpence.

(z) The provision in 25 & 26 Vict. c. 61, s. 11, third subsection, appears to be here referred to.

(a) See 26 & 27 Vict. c. 61, *ante*, p. 97.

(b) The 26 & 27 Vict. c. 61, s. 1, prohibits a waywarden contracting, &c., in respect of work to be executed within the parish for which he is elected waywarden, or within any other parish in the same district. It will be seen, however, that the present Act only removes the prohibition (with the licence of justices) within the parish for which he is waywarden, and that he will still be disqualified for contracting for work within any other parish in the same district.

(c) As to obtaining materials for repair of a turnpike road thrown upon a highway district, see 33 & 34 Vict. c. 73, s. 11, *post*.

By 33 & 34 Vict. c. 32, s. 11, no person shall be required to take

Provisions for discontinuance of Maintenance of unnecessary Highways.

21. When any Highway Board considers any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the "Highway Act, 1835," to procure the stopping up of any highway, (d) save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require: Provided, that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the Clerk of the Highway Board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of circumstances since the time of the making of any such order as aforesaid under which the liability of the parish to repair such highway has ceased the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

out a licence under the 32 & 33 Geo. III. c. 14, for any horse or mule kept by him solely for the purpose of husbandry on account of such horse or mule being used or employed in drawing materials for the repair of roads and highways of the parish in which he is a rated occupier, and whether for hire or otherwise.

(d) As regards the stopping up of unnecessary highways, see 5 & 6 Wm. IV. c. 50, ss. 84-93, in Glen's "Highway Laws," second edition.

The words "and thereupon the like proceedings shall be had as where application is made under the Highway Act, 1835," confer a power of appeal to quarter sessions in like manner as by s. 88 of the 5 & 6 Wm. IV. c. 50.—*Reg. v. Surrey* 77 L. R. 5 Q. B. 87, 466, 39 L. J. M. C. 49, 145, 34 J. P. 199.

Highway Board may contract to repair Highways for the repair of which other Parties are liable.

22. The Highway Board of any district may from time to time contract (e) for any time not exceeding three years with any person or body of persons, corporate or unincorporate, to repair any highways, turnpike roads, or roads over county or other bridges, or any part thereof, for the repairing of which such persons or body of persons are liable; (f) and any persons or body of persons liable to repair any roads may contract with the Highway Board for the repairing any highways, inclusive as aforesaid, or any part thereof, which the Highway Board is liable to make or repair; and the money payable under any contract made in pursuance of this section shall be raised in the same manner and be paid out of the same rates as would have been applicable to defray the expenses of the repair of such highways if no contract had been made in respect thereto. (g)

Amendment of s. 34 of Highway Act, 1862.

23. Section thirty-four of the "Highway Act, 1862," shall be construed as if, instead of the words "shall be adjudged in the manner provided by the principal Act to be out of repair," the words were substituted, "shall be adjudged in manner provided by the Highway Act, 1862, (h) to be out of repair."

Amendment of s. 35 of Highway Act of 1862.

24. The Highway Board may apply, under section thirty-five of the "Highway Act of 1862," for the purpose of making any highway to which that section refers a highway to be repaired and maintained by the parish in which the same is situate, and upon such application being made the

(e) By 28 & 29 Vict. c. 96, s. 30, repealed by 33 & 34 Vict. c. 99, and again by 33 & 34 Vict. c. 97, sch., no contract to be made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways shall be chargeable with any higher stamp duty than sixpence.

(f) It is only the repair of the *roads* that can be contracted for under this section; the contract cannot be made to extend to the repair of the structure of county or other bridges.

(g) See ss. 32-35, *post.*

(h) *Ante*, p. 73; see 25 & 26 Vict. c. 61, s. 18, as well as s. 34.

same proceedings may be had as upon the application of the person or corporation liable to repair the same. (i)

Section 74 of 5 & 6 Wm. IV. c. 50, repealed, and other provisions made as to Cattle found straying, &c., on Highways.

25. The seventy-fourth section of the "Highway Act, 1835," shall be repealed, and instead thereof be it enacted, If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on or lying (j) about any highway, or across any part thereof, or by the sides thereof, (k) (except on such parts of any highway as pass over any common or waste or uninclosed ground,) the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the parish where the same shall be found, or to such other place as may have been provided for the purpose; Provided always, that no owner of any such animal shall in

(i) Under s. 35 of the former Act only the person or corporation liable by reason of tenure of lands or otherwise to repair any highway situate in a highway district could apply to the justices for the purpose of making the highway a highway to be repaired and maintained by the parish; now, the Highway Board may make the application.

(j) With reference to the expressions "straying on or lying," see *Sherborn v. Wells*, 8 L. T. (N. S.) 274. The Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 54, imposes a penalty on all persons who, to the annoyance of passengers, shall turn loose any horse or cattle in a thoroughfare; and upon that enactment it was held in the above-mentioned case that where a person sent his cattle without a halter, but under the care of a boy, to graze on a highway, no offence was committed within the meaning of the Act, as the expression "turn loose" means leaving the cattle without control. See also note (l) on the next page.

(k) "By the sides" of the highway must be understood all the space for the ordinary carriage or foot-road over or along which the public have a right to pass.—See *Reg. v. United Kingdom Electric Telegraph Company (Limited)*, 2 B. & S. 647, 31 L. J. (N. S.) M. C. 166.

According to the opinion of the law officers of the Crown, referred to in Glen's "Highway Laws," second edition, p. 425, cattle found on a highway in contravention of 27 & 28 Vict. c. 101, s. 25, can be removed to the common pound.

-any case pay more than the sum of thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorized keeper of the pound: Provided also, that nothing in this Act shall be deemed to extend to take away any right of pasture which may exist on the sides of any highway. (1)

As to service of Notices issued by the Highway Board.

26. Any notice in respect of which no other mode of service is provided by the Highway Board in pursuance of powers in that behalf conferred on them, and any precept, summons, or order issued by the Highway Board, may be served,—

(1) The above provision was introduced in the House of Lords. It now also applies to turnpike roads. See 34 & 35 Vict. c. 115, s. 20, post, p. 144.

It is an offence under s. 25 to allow cattle to lie about a highway, though in the charge and control of a keeper; *Lawrence* app., *King* resp., L. R. 3 Q. B. 345, 37 L. J. M. C. 78, and in *Morris* app., *Jeffries* resp., L. R. 1 Q. B. 261, it was held that horses grazing on the side of a turnpike road with a man in charge of them, they being under his control, were not liable to be impounded under 4 Geo. IV. c. 95, s. 75, as "wandering, straying, or lying" about the road.

The mere fact of a keeper being with sheep is not enough to prevent the liability, for the keeper might be negligent. But if sheep be driven along a road, and a cow is tired and the keeper lets it rest a little, no penalty will be incurred. The justices will be wrong if they convict on the mere fact that sheep are found straying on the highway, without considering whether the keeper was *bond fide* driving them, and merely stopped to take breath and rest temporarily.—*Horwood v. Goodall*, 36 J. P. 70.

Where a right of pasturing cattle on the sides of a highway exists, the owner becomes liable to the penalty mentioned in s. 25 if the keeper, under whose charge they are, allows them to stray from the sides of the highway.—*Golding v. Stocking*, 38 L. J. M. C. 122, L. R. 4 Q. B. 516, 20 L. T. (N. S.) 479, 33 J. P. 278.

By a local Act a certain barrier bank made for drainage purposes in Lincolnshire, together with a road thereon, is vested in trustees, who are by the Act directed and required from time to time to let the herbage of the bank to be grazed with sheep only, at such yearly rent as can be reasonably had for the same. The road which runs along the top of the bank is an open public highway, and sheep owned by a rentor of the herbage and depastured on the sides of the barrier bank having been found upon the metalled part of the highway, the owner was held rightly convicted and fined under s. 25 of the Highway Act, 1864.—*Bothamley v. Danby*, 24 L. T. (N. S.) 656.

- By delivery of the same personally on the party required to be served; or
 By leaving the same, at the usual or last known place of abode of such party as aforesaid; or
 By forwarding the same by post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by post it shall be sufficient to prove that the document was properly directed, (m) and that it was put as a prepaid letter into the post-office; and in serving notice on the overseers or the waywardens (if more than one) of any parish it shall be sufficient to serve the same on any one of such officers in a parish. (n)

Schedule to Highway Act of 1862 repealed, and other Regulations made.

27. The schedule annexed to the "Highway Act of 1862" (o) shall be repealed so far as relates to the proceedings of Highway Boards, and the proceedings of Highway Boards shall, after the passing of this Act, be subject to the regulations contained in the first schedule to this Act annexed. (p)

Amendment of s. 43 of Highway Act, 1862.

28. The forty-third section of the "Highway Act of

(m) Query, what will be considered evidence that the document was "properly directed?" The expression is extremely vague. If the document be intended for the overseers or waywardens of a parish, will it be "properly directed" without their names and addresses having been respectively written upon it; or will it be sufficient to prove that it was simply directed to the overseers or to the waywardens of the particular parish without naming them; and how if the post town of the parish be omitted, or the wrong post town added to the address of the document. As to the service of summonses or notices on a Highway Board, see 25 & 26 Vict. c. 61, s. 42, subsection 6.

(n) But any overseer or waywarden upon whom the notice was not served will not be liable for the neglect of his colleague on whom it was served. The proceedings should be taken against the particular overseer or waywarden who was served with the notice.

As to service of notice, &c., upon the Highway Board, see 25 & 26 Vict. c. 61, s. 42, subsection 6, *ante*.

(o) *Ante*, p. 85; see 25 & 26 Vict. c. 61, s. 9, subsection 7.

(p) See notes to this schedule and the schedule of 25 & 26 Vict. c. 61.

1892" shall be construed as if in the second article thereof the words "not exceeding five pounds" were omitted.

Qualification of ex-officio Waywardens.

29. A justice of the peace acting for the county in which a highway district is situate, if he is resident in any place which is prohibited either altogether or without the consent of the local authority from being included in a highway district by the seventh section of the "Highway Act of 1862," and which is surrounded by or adjoins in any part such highway district, shall, by virtue of his office, be a member of the Highway Board of such district, (q) subject to this qualification, that if in pursuance of this section any justice of the peace would be entitled to be a member of two or more highway boards in the same county, he shall, by letter under his hand, addressed to the Clerk of the Highway Board for which he elects to act, and by him to be transmitted to the Clerk of the Peace of the county, declare of which of the said highway boards he elects to be a member, and having made that election he shall be bound thereby, and shall not be entitled by virtue of his office of justice to be a member of any other of the said boards.

Appointment of Officers of Board.

30. The appointment of any officer of a Highway Board may be made by a minute of the Board, signed by the chairman and countersigned by the Clerk of the Board, and any appointment so made shall be as valid as if it were made under the seal of the Board. (r)

Power to appoint paid Collectors of Highway Rates.

31. The power of appointing paid collectors of highway rates with the consent of the inhabitants in vestry assembled,

(q) As to the constitution of Highway Boards, see 25 and 26 Vict. c. 61, s. 9, subsection 1. It will be seen that if the justice resides in a place which is not prohibited by 25 & 26 Vict. c. 61, s. 7, from being included in a highway district, he cannot under this section become *ex-officio* member of a highway district in which he does not reside.

(r) See 25 & 26 Vict. c. 61, s. 12, and note thereon. Notwithstanding the present provision, the appointment of Clerk to the Highway Board must be by writing under seal, as in his case, the office being vacant, there would be no clerk competent to countersign the minute of appointment.

which is vested in a surveyor by the "Highway Act, 1835," (s) and all the provisions of that Act relating to such appointment, (t) shall be vested in and extend to any waywarden required to levy rates in pursuance of the "Highway Act, 1862," (u) and this Act, (v) or either of such Acts ; and for the purposes of this Act (w) any meeting of ratepayers (x) entitled to elect a waywarden or waywardens shall be deemed to be included under the expression "inhabitants in vestry assembled," as used in this section, and the Highway Acts.

AS TO EXPENSES OF BOARD.

Repeal of Sections 20, 21, 22, 23, and 24 of Highway Act, 1862.

32. Sections Twenty, Twenty-one, Twenty-two, Twenty-three, and Twenty-four of the "Highway Act, 1862," relating to the expenses of the Board, shall be repealed ; but such repeal shall not affect any rate made previously to the passing of this Act, or any legal proceeding or remedy for enforcing the same.

(s) Under 5 & 6 Wm. IV. c. 50, s. 36, the surveyor may from time to time appoint any number of collectors of highway rates, and may remove any collector and appoint another in his stead, and make such allowance to the collector out of the highway rates as the vestry shall think reasonable.

(t) The same powers, remedies, and privileges, for levying and enforcing payment of highway rates as are given to the surveyor, are also given by s. 34 of 5 and 6 Wm. IV. c. 50 to the collector ; that is to say, the collector has, for the levying and recovering of the rates, the same powers, remedies, and privileges as overseers of the poor have by law for the recovery of the poor rate. But see s. 34, *post*. The surveyor, by s. 37, is required to take security by bond, but without stamp, for every collector, to the full amount of the sum likely to be in his hands at any one time. Further, by s. 39 of 5 & 6 Wm. IV. c. 50, the surveyor is required to keep separate and distinct accounts of the moneys levied for the highway rate, and he must specify in them the different sums and the times when, and the persons to whom and by whom they shall have been collected and paid.

(u) Section 22 of 25 and 26 Vict. c. 61, which required the waywarden to levy rates in certain cases, is repealed by s. 32, *post*.

(v) See s. 33, *post*, second subdivision.

(w) That is, for all purposes of the Act—not of this section only.

(x) With regard to this provision, see 25 & 26 Vict. c. 61, s. 10, third subdivision.

Expenses how to be charged.

The salaries of the officers appointed for each district, and any other expenses incurred by any Highway Board for the common use or benefit of the several parishes within such district, (y) shall be annually charged to a district fund to be contributed by and charged upon the several highway parishes within such district in proportion to the rateable value of the property in each parish, (z) but the expenses of maintaining and keeping in repair the highways of each highway parish within the district, (a) and all other expenses legally payable by the Highway Board in relation to such parish, including any sums of money that would have been payable out of the highway rates of such parish if the same had not become part of a highway district, except such expenses as are in this Act authorized to be charged to the district fund, shall be a separate charge on each parish. (b)

(y) In a note to s. 20 of the former statute it is observed that the cost of implements, tools, carts, and the like, appear to be expenses incurred for the common use or benefit of the district, and should therefore be charged to the district fund; and that it would obviously be impracticable to confine the use of any such things exclusively to any particular parish, but that the cost of actual labour and materials will be a separate charge on each parish.

(z) Under s. 20 of the former Act the district fund was to be contributed to and charged upon the several parishes in proportion to the average of the expenditure incurred during the three last preceding years in maintaining and repairing the highways. The present Act, it will be seen, substitutes the rateable value of property in each parish for the averages.

The maintenance of certain highways, formerly turnpike roads, is also charged on this fund. See 33 and 34 Vict. c. 73, s. 10, *post*, 37 & 38 Vict. c. 95, s. 10, *post*, pp. 140, 149.

(a) A township was included in a highway district, and a person having caused an obstruction in a highway, the Highway Board, at the instance of the waywarden of the parish, indicted such person for the same, who removed the indictment by *certiorari*. Upon the trial, the person causing the obstruction was found guilty, and subsequently paid the taxed costs of the indictment. There was, however, a sum of £60 extra costs upon the indictment, which the Highway Board charged against the township; and it was held that the costs of the indictment were such costs as the Highway Board were justified, under the 25 & 26 Vict. c. 61, s. 20, in incurring to remove an obstruction to the highway, and that they were properly chargeable against the township under that section.—*Reg. v. Heath*, 12 L. T. (N. S.) 492, 6 B. & S. 578.

(b) A Highway Board have no power to incur expenses in opposing a Bill in Parliament, even though such Bill should affect some of the

The rateable value of the property in each parish shall be ascertained according to the valuation list (*c*) or other estimate (*d*) for the time being in force in such parish for the purposes of the poor rate, or if no such valuation list or estimate (*d*) be in force, then in such manner as may be determined by the justices in petty sessions, subject to an appeal by any person aggrieved to the next general or quarter sessions.

Mode of defraying Expenses of the Highway Board.

33. For the purpose of obtaining payment from the several highway parishes within their district of the sums to be con-

parishes in the district, and the opposition should be successful. In the particular case the Highway Board opposed in Parliament a Bill promoted by the trustees of a turnpike road, which ran through fifteen out of the twenty-one parishes of which the district was composed; and the quarter sessions found that such opposition was *bond fide*, and the result beneficial to the district. The Board apportioned the expenses of the opposition among the several parishes in the district; but on a case stated the court held that they had no lawful authority to incur the expenses.—*Reg. v. Kingsbridge Highway Board*, 18 L. T. (N. S.) 554, 32 J. P. 372.

(*c*) As regards the Valuation List of the parish, see the provisions of 25 & 26 Vict. c. 103, and 27 and 28 Vict. c. 39, in Mr. Danby P. Fry's Union Assessment Committee Acts, published by Messrs. Knight & Co.

When the highway district consists of parishes comprised in different poor law unions, there is no power given by this Act or by the Union Assessment Committee Acts to secure that the assessments of parishes in different unions are all made upon the same principle. It is obvious that in such a case, if the parishes in one union are undervalued, the parishes in the union which are valued upon a higher principle will be unduly burdened with the cost of the district fund of the Highway Board.

(*d*) To say that an "estimate" of the rateable value is "in force" for the purposes of the poor rate is an incorrect expression. If there be no Valuation List in force, the overseers must make the poor rate upon an estimate of the rateable value, according to 6 & 7 Wm. IV. c. 96, s. 1; and probably it is the rateable value according to the last poor rate made in the parish, which is intended. But in every parish there must either be a Valuation List or "other estimate" upon which the poor rate is made. No estimate of the rateable value could be formed without a valuation of the several properties in the parish, the expense of which the Act nowhere provides for. Again, as to the appeal to the quarter sessions, apparently it might either be by a ratepayer of the particular parish alleging that the property is too highly valued, or by a ratepayer of some other parish in the district alleging that the estimate of the rateable value is too low.

tributed by them, the Highway Board shall order precepts to be issued to the waywardens or overseers (*e*) of the said parishes according to the provisions hereinafter contained stating the sum to be contributed by each parish, and requiring the officer to whom the precept is addressed, within a time to be limited by the precept, to pay the sum therein mentioned to the treasurer of the Board.

Where a highway parish is not a parish separately maintaining its own poor, or where in any highway parish it has for a period of not less than seven years immediately preceding the passing of the "Highway Act, 1862," been the custom of the surveyor of highways for such parish to levy a highway rate in respect of property not subject by law to be assessed to poor rates, (*f*) the precept of the Highway Board shall be addressed to the waywarden of the parish, and in all other cases it shall be addressed to the overseers.

Where the precept is addressed to a waywarden he shall pay the sum thereby required out of a separate rate, (*g*) and such separate rate shall, in the case of a parish in which for such period aforesaid it has been the custom of the surveyor of highways to levy a highway rate in respect of property not subject by law to be assessed to poor rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such rate shall be assessed on and levied from the persons and in respect of the property on, from, and in respect of which a poor rate would be assessable and

(*e*) The Act only mentions "overseers," but in the case of a parish in which the churchwardens are *ex-officio* overseers of the poor, the precept should be addressed to them also. As to the service, see s. 26 of this Act.

(*f*) The custom must have existed on the 29th July, 1855, *i.e.*, seven years previous to the passing of the 25 & 26 Vict. c. 61.

See also the Rating Act, 1874, under which mines, underwood, and rights of sporting may now be rated.

(*g*) The Act is silent as to the basis of this rate. The Valuation List of the parish may very safely be adopted in respect of the property which is liable to the poor rate. Further on in the section the rate is described as a highway rate; and therefore the provisions of the Small Tenements Rating Act, 13 & 14 Vict. c. 99, as to highway rates, will apply; and the waywarden must make the rate upon the owners and not upon the occupiers of all tenements the rateable value whereof does not exceed 6*l.*, provided that Act be in force in the particular parish. Of course the Small Tenements Rating Act will not apply if the parish

leviable if the parish of which he is waywarden were a place separately maintaining its own poor.

No rate leviable by a waywarden under this Act shall be payable until the same has been published in manner in which rates for the relief of the poor are by law required to be published. (h)

A waywarden shall account to the Highway Board for the amount of all rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any rate so levied, above the amount for which the rate was made, to the treasurer of the Highway Board, to the credit of the parish within which such rate was made, and such surplus shall go in reduction of the next highway rate that may be leviable in such parish.

Where the precept is addressed to the overseers they shall pay the sum thereby required out of a poor rate to be levied by them, or out of any moneys in their hands applicable to the relief of the poor. (i)

be within a Parliamentary borough. See Glen and Lovesy's Representation of the People Act, 1867, third edition.

(h) By 17 Geo. II. c. 3, s. 1, the churchwardens and overseers "shall give, or cause to be given, public notice in the church of every rate for the relief of the poor allowed by the justices of the peace the next Sunday after the same shall have been so allowed;" but now, instead of the notice in church, by 1 Vict. c. 45, s. 2, it is to be reduced into writing, and copies thereof, either in writing or in print, or partly in writing and partly in print, are to be affixed previously to divine service on or near to the doors of all the churches and chapels within the parish or place. It will be seen that under this Act the rate is not to be allowed by the justices as a poor rate is allowed, and that it is only to be published. By 5 & 6 Wm. IV. c. 50, s. 27, a highway rate was to be allowed by two justices, as well as published.

Appeals against the rate are provided for by s. 37, *post*.

(i) *Exemption from highway rates since the Highway Act of 1862—Form of poor rate with highway purposes.*—The township of W. separately maintains its own poor, and the hamlet of G., within the township, from time immemorial had separately maintained its own highways. H. was an occupier of land within the hamlet, the owners and occupiers of which from time immemorial had been exempt from contributing to the repairs of the highways by reason of their repairing a particular road in the hamlet; but the occupiers of the land had always been rated to the relief of the poor. The quarter sessions, under the 25 & 26 Vict. c. 61, divided the county into highway districts, and ordered, under sect. 7, that "in case any township which separately maintains its own poor is divided into any hamlets, &c., each of which separately maintains its own highways, such hamlets, &c., shall be com-

No contribution required to be paid by any parish at any one time in respect of highway rates shall exceed the sum of tenpence in the pound, (*j*) and the aggregate of contributions required to be paid by any parish in any one year in respect of highway rates shall not exceed the sum of two shillings and sixpence in the pound, (*j*) except with the consent of four-fifths of the ratepayers of the parish in which such excess may be levied present at a meeting specially called for the purpose, of which ten days' previous notice has been given by the waywarden of such parish, (*k*) and

bined, and such township shall be subject to the same liabilities in respect of all the highways within it which were before maintained by such hamlets, &c., as if all their several liabilities had attached to the whole township." The Highway Board for the division in which W. was situate issued their precept, under sect. 21, to the overseers requiring them to pay to the treasurer a certain sum, by two instalments, towards the repairs, &c., of the highways within the township, including those in the hamlet of G., and the overseers made a rate, headed "an assessment for the relief of the poor of the township of W., and for other purposes chargeable thereon, at the rate of 1s. in the pound." This rate was made upon every occupier of property liable to be rated to the relief of the poor, including H., the sum charged upon each being one sum, at the rate of 1s. in the pound. Of this the amount required for the payment of the first instalment under the precept was 4d. in the pound, and 8d. in the pound for the relief of the poor. H. having appealed against this rate on the ground that, being exempt from highway rates, he ought to have been assessed at 8d. only: Held, that the effect of the 25 & 26 Vict. c. 61, coupled with the 5 & 6 Wm. IV. c. 50, s. 33, was not to alter the liability to highway maintenance; and that the rate ought to be amended by reducing the appellant's assessment to 8d. in the pound. *Semblé*, that the amount assessed for the highways should appear on the face of the rate, so that the ratepayers may see how much is for the maintenance of the poor and how much for the repair of the highways; and why one occupier, who is liable to both, is charged with the aggregate, and another, who is liable to one only, with that one.—*Reg. resp. v. Heath*, app., L. R. 1 Q. B. 218, 13 L. T. (N.S.) 669, 7 B. & S. 285, 35 L. J. M. C. 113, 12 Jur. (N.S.) 355.

The most practical mode of carrying out the effect of this decision will apparently be for the overseers to enter in the rate-book as irrecoverable the amount claimed in respect of the exemption.

(*j*) That is on the rateable value of the property in the parish. See notes to the last subdivision of s. 32, *ante*.

(*k*) This notice should be given in the same way that notices of vestry meetings are given, only that it must be given by the waywarden. The meeting will in fact be a vestry meeting, and will be presided over by the incumbent of the parish, if he be present thereat.

then only to such extent as may be determined by such meeting. (l)

All sums of money payable in pursuance of the precepts of a Highway Board shall, whether they are payable or not by the overseers of the poor, be subject to all charges to which ordinary highway rates are subject by law.

Power to levy Rates for making Payments to Highway Board.

34. All waywardens and overseers to whom precepts of a Highway Board are hereby directed or authorized to be issued shall within their respective parishes have the same powers, remedies, and privileges, for and in respect of assessing and levying any rates required to be levied for making payments to a Highway Board, in the case of overseers as they have in assessing and levying ordinary rates for the relief of the poor, and in the case of waywardens as they would have if the parish of which they are waywardens were a place separately maintaining its own poor, and they were overseers thereof, and the rate to be levied by them were a duly authorized poor rate.

Mode of enforcing Payments to Highway Boards.

35. If any payment required to be made by the overseers or waywardens of any parish of moneys due to a Highway Board is in arrear, it shall be lawful for any justice, on application under the hand of the chairman for the time being or by the Clerk of such Board, (m) to summon the said overseers or waywardens to show cause at petty sessions why such payment has not been made ; and the justices at such petty sessions, after hearing the complaint preferred on behalf of the Board, may, if they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or

(l) The limitation as to the amounts to be called for by the Highway Board is in conformity with 5 & 6 Wm. IV. c. 50, s. 29, and the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 23. See Glen's "Treatise on the Law of Highways." It will be necessary for the Highway Board, in making their precepts, to see that they do not call on any parish for a sum exceeding the prescribed limit.

(m) Under 25 & 26 Vict. c. 61, s. 24, the application could only be under the hand of the chairman—now the Clerk may make it ; but, unless under very special circumstances, he should not initiate the proceedings except in pursuance of a resolution of the Highway Board.

waywardens, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered, (n) and the amount of such arrear, together with the costs aforesaid, when levied and recovered, to be paid to the said Board. (o)

ACCOUNTS OF BOARD.

Sects. 25, 26, and 30 of Highway Act, 1862, repealed, and other Provisions substituted.

36. The twenty-fifth, twenty-sixth, and thirtieth sections of the "Highway Act, 1862," shall be repealed, but such repeal shall not affect any proceeding commenced previously to the passing of this Act, and instead thereof the following provisions shall be enacted ; that is to say,

The accounts of every Highway Board shall be made up and balanced to the Thirty-first of December in every year. (p)

After the expiration of not less than fourteen days nor more than twenty-eight days from the Thirty-first of December, the accounts shall be examined by the Board, and signed by the chairman.

(n) That is by distress and sale of the goods of the waywarden or overseer, and, in default, committal for a period not exceeding three calendar months. See 12 Vict. c. 14, s. 2, in Glen's "Poor Law Statutes," vol. 2.

(o) Neither the waywarden nor the overseers will be entitled to pay these costs out of the public money under their control.

A Highway Board have no power to incur expenses in opposing a Bill in Parliament, even where a Bill (promoted by turnpike trustees) would affect some of the parishes in the district, and the opposition might be successful.—*Reg. v. Kingbridge Highway Board*, 18 L. T. (N. S.) 554.

But the costs of an indictment for an obstruction to a highway are such costs as a Highway Board are justified in incurring, to remove the obstruction ; and in the particular case it was held that such costs were properly chargeable against the parish where the highway lay.—*Reg. v. Heath*, 6 B. & S. 578, 12 L. S. (N.S.) 492.

(p) By 25 and 26 Vict. c. 61, s. 25, the date for making up and balancing the accounts was to be 25th March in every year ; now it is the 31st December. In highway districts in South Wales the accounts are made up to the 25th March (23 & 24 Vict. c. 68, s. 27). In parishes not in a highway district, within fourteen days after the election or appointment of the surveyor, they are to be made up and balanced (5 & 6 Wm. IV. c. 50, s. 44) ; so also if the parish be under a Highway Board appointed under that Act.

The Board may, if they think fit, appoint any fit person, not being a member or officer of the Board, to audit their accounts, (q) and may award to him a reasonable compensation, (r) to be paid out of the district fund. (s)

Within thirty days after the signature of the accounts by the chairman the Board shall cause a statement showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars and in such form as the Secretary of State (t) may direct (u) to be printed, and sent by post or otherwise to each member of the Board, and to the overseers of every parish within the district having overseers; and the clerk of the Board shall furnish a copy of such statement to any ratepayer or owner of property situate within the district, on his application, and on the payment of a sum not exceeding one penny.

(q) The appointment will be made by a resolution entered on the minutes of the proceedings of the Board; but it seems that the person appointed will only have to authenticate the accuracy of the accounts. As an auditor he will have no authority to disallow expenditure improperly incurred, or to surcharge any one with money not brought into account, or for loss occasioned by negligence or otherwise.

(r) Under the Local Government Act, 21 & 22 Vict. c. 98, s. 60, the pay of an auditor is not to be less than two guineas a day for every day during which he is employed in auditing, as the Local Board may appoint, besides his expenses. Here no provision is made for the auditor's expenses; but probably they may be considered in making the award of a "reasonable compensation."

Further, with regard to the audit of the accounts by a person specially appointed for the purpose, a difficulty may very likely arise as to signing them by the chairman, as the Act does not say that they are to be so signed as in the case when the Highway Board itself examines them. But see the next subdivision of this section, and note thereon.

(s) It may here be stated that justices sitting at a special sessions for highways have no power under s. 44 of 5 & 6 Wm. IV. c. 50, to allow charges in the surveyor's accounts which are illegal by reason of the provisions of the 46th section of the same statute.—*Barton v. Piggott*, 44 L. J. M. C. 5.

(t) Now the Local Government Board. See 35 & 36 Vict. c. 79, s. 36, *post*, p. 145.

(u) As to this form, see 25 & 26 Vict. c. 61, s. 29, *ante*.

The books of account of the Board shall at all seasonable times be open to the inspection of any ratepayer of any Highway parish within the district of the Board. (v)

Persons aggrieved by Rates levied may appeal in manner provided by 6 & 7 Wm. IV. c. 96.

37. If any person feels aggrieved by any rate (w) levied on him for the purpose of raising moneys payable under a precept of a Highway Board on the ground of incorrectness in the valuation of any property included in such rate, or of any person being put on or left out of such rate, or of the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the justices in special sessions in manner provided by the Act of the Session of the sixth and seventh years of the reign of His Majesty King William the Fourth, Chapter Ninety-six, Sections six and seven, (x) and all the provisions of the said sections shall be applicable to such appeal.

(v) Therefore any ratepayer may, at any "seasonable" time either before or after the audit, and at any "seasonable" time during the year, inspect the books of account of the Board. But whether the current books of account are referred to, or how far back the inspection may extend, the Act is silent. It will be observed that it is only of the books of account of the Board that inspection can be demanded.

(w) That is any rate levied by a waywarden under s. 33, *ante*. Appeals against poor rates, out of which in certain cases the precepts of the Highway Board are payable by overseers, are otherwise provided for.

(x) The following are the sections of 6 & 7 Wm. IV. c. 96, here referred to :—

"6. And be it enacted, that the justices acting in and for every petty sessions division shall, four times at least in every year, hold a special session for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes twenty-eight days at the least before the holding of the same; and such special sessions shall and may be adjourned from time to time by the justices there present, as they may think fit; and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the value of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall, within fourteen days after the same shall have been made, cause notice to be given in

Power to appeal to Quarter Sessions against items of Expense and Expenditure, &c.

38. Where any waywarden of a highway parish of a district, or any ratepayer of such parish, feels aggrieved in respect of the matters following:—

- (i.) In respect of any order of the Highway Board for the repair of any highway in his parish on the ground that such highway is not legally repairable by the

writing of his or her or their intention of appealing against such decision, and of the matter or cause of such appeal, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice, shall enter into a recognizance before some justice of the peace, with sufficient securities conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing, or appealed against, as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever. Provided always, that no such objection shall be enquired into by the said justices in special session, unless notice of such objection in writing, under the hand of the complainant, shall have been given seven days at least before the day appointed for such special session to the collector, overseer, or other persons by whom such rate was made. Provided also, that the said justices in special session shall not be authorized to inquire into the liability of any hereditaments to be rated, but only into the true value thereof, and into the fairness of the amount at which the same shall have been rated.

“7. And be it enacted, that the justices present at any such special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs which any court of quarter sessions of the peace has upon appeals from any such rate except as is herein excepted. Provided always, that no order of the said justices shall be removed by *cetiorari* or otherwise into His Majesty's courts of record at Westminster. Provided also, that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions. Provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject-matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal.”

parish, (y) or in respect of any other order of the Board on the ground that the matter to which such order relates is one in regard to which the Board have no jurisdiction to make an order;

- (2.) In respect of any item of expense charged to the separate account of his parish on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the Board have no authority by law to make any expenditure whatever;
- (3.) In respect of any item of expenditure charged to the district fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the Board have no authority by law to make any expenditure whatever;
- (4.) In respect of the contribution required to be made by each parish to the district fund on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by this Act; (z)

he may, upon complying with the conditions hereinafter mentioned, (a) appeal to the court of general or quarter sessions (b) having jurisdiction in the district; but no appeal shall be had in respect of any exercise of the discretion of the Board in matters within their discretion; and no appeal shall be had except in respect of the matters and upon the grounds hereinbefore mentioned. (c)

(y) Under this provision, in cases where the Highway Board make an order for the repair of any highway, the liability of the parish to the repair of which is in dispute, the validity of the order may be questioned on appeal. It is the converse of the case where the parish is indicted for non-repair of a road, and disputes that the road is a highway repairable by the parish. Now if the Board improperly undertake the repair of a highway at the expense of the ratepayers, they will do so at the risk of an appeal. It is, however, difficult to see what "order" the Board could make in the case. Probably the word "order" may be read "direction." Apparently, if the district surveyor should repair the highway without any special order of the Board, an appeal would not lie; but notice the limitation in s. 39 (1) as to the time of appeal.

(z) As to such proportion, see s. 32, *ante*.

(a) See s. 39, *post*.

(b) Probably the next practicable sessions is intended.

(c) It will be seen, therefore, that there will be no appeal against

Conditions of Appeal to General or Quarter Sessions.

39. No appeal shall be entertained by any court of general or quarter sessions in pursuance of this Act unless the following conditions have been complied with:

- (1.) Notice of the intention of appeal must be served by the appellant on the clerk of the Highway Board in the case of an appeal against an order within two months after the order, (d) and in the case of an appeal in respect of any item of expense or contribution within one month after the statement of the account of the Board has been sent to each member of the Board as hereinbefore mentioned: (e)
- (2.) The notice must state the matter appealed against, and the ground of the appeal.

On the receipt of the notice the Board may serve a counter notice on the appellant, requiring him to appear in person or by his agent (f) at the next meeting of the Board and support his appeal. On hearing the appellant the Board may rectify the matter complained of, (g) and if they do so to a reasonable extent, (h) and tender to the appellant a reasonable sum for the costs of his attendance, it shall not be lawful for the appellant to proceed with his appeal. In

excessive expenditure in respect of a matter in which the Board has authority by law to make expenditure.

(d) In general the ratepayers would know nothing of the making of the order; therefore the waywarden must look after the interests of his parish in this respect.

(e) See s. 36, last subdivision but one, *ante*.

(f) The "agent" need not necessarily be an attorney; but looking at the difficulty of the questions which would have to be dealt with, any other than a professional man could scarcely deal with them properly on behalf of his principal.

(g) If the appeal be against an order to repair the highway, the Board may rectify the matter by simply abandoning the order; but if it be a matter of account, the manner of rectifying it will be more difficult. It can scarcely happen that a public body such as a Highway Board would charge in their accounts expenses which had not in fact been incurred; but when they have incurred expenses without any authority in law, to "rectify the matter complained of" they must refund the money illegally expended; but how? by subscription amongst the members of the Board, or individually? The Act, in fact, fails to provide any practical mode of dealing with such a case.

(h) The Board will be the judge of what is "a reasonable extent" within the meaning of this provision.

any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the Board shall be deemed part of the costs of the appeal.

Power to refer Case to Arbitration.

40. If at any time after notice of appeal has been given it appears to the court of general or quarter sessions, on the application of either party in the presence of or after notice has been given to the other party, (*i*) that the matter in question in such appeal consists wholly or in part of matters of mere account which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court; and the award made on such arbitration shall be enforceable by the same process as the order of the court of quarter sessions. (*j*)

Provisions of 17 & 18 Vict. c. 125, incorporated.

41. The provisions of "The Common Law Procedure Act, 1854," relating to compulsory references, (*k*) shall be deemed to extend to arbitrations directed by the court of quarter sessions; and the word "court" in the said Act shall be deemed to include the court of quarter sessions.

(*i*) This reference will only arise when the Board have refused to rectify the matter complained of under s. 39.

(*j*) By statute 12 & 13 Vict. c. 45, s. 18, "in all cases where any order shall be made by any court of general or quarter sessions of the peace, it shall be lawful for the Court of Queen's Bench, or for any judge of that court at chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy, and upon proof of refusal or neglect to obey such order, to order and direct such order of the court of general or quarter sessions to be removed into the said Court of Queen's Bench; and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order."

(*k*) See ss. 3-17 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), in the Appendix, pp. 156, 157.

Proceedings on Appeal.

42. If upon the hearing of the appeal it appears to the court that the question in dispute involves an inquiry as to whether a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the court may either themselves decide such question, or may impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to such jury such questions in relation to the matters of fact in dispute as the court think fit; and the verdict of such jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them.

The questions so submitted shall be in the form and shall be tried as nearly as may be in the manner in which feigned issues are ordinarily tried; (*l*) and the court shall decide the parties to be plaintiffs and defendants in such trials.

Subject as aforesaid, the court may, upon the hearing of any appeal under this Act, confirm, reverse, or modify any

(*l*) A feigned issue is a proceeding whereby an action is supposed to be brought by consent of the parties to determine some disputed right, without the formality of pleading, saving thereby both time and expense. It may be ordered either by a court of law or equity, or by a judge under the Interpleader Act, 1 & 2 Wm. IV. c. 58. The 8 & 9 Vict. c. 109, s. 19, after reciting that many important questions are now tried in the form of feigned issues, by stating that a wager was laid between two parties interested in respectively maintaining the affirmative and the negative of certain propositions, but that such questions may be as satisfactorily tried without such form, enacts, that in every case where any court of law or equity may desire to have any question of fact decided by a jury, it shall be lawful for such court to direct a writ of summons to be sued out by such person or persons as such court shall think ought to be defendant or defendants therein, in the form set forth in the second Schedule to the Act annexed, with such alterations or additions as such court may think proper; and thereupon all the proceedings shall go on and be brought to a close in the same manner as is now practised in proceedings upon a feigned issue.

The second Schedule of the 8 & 9 Vict. c. 109 is as follows:—
 “In the Court of Queen’s Bench [Common Pleas, or Exchequer, or in any inferior court as the case may be].
 “Middlesex to wit [or such other county as may be directed].
 “Whereas A. B. affirms, and C. D. denies [*here state fully the fact or facts in issue*], and the Lord Chancellor [or such other court, &c.] is desirous of ascertaining the truth by the verdict of a jury, and both parties pray that the same may be inquired of by the country. Now let a jury, &c.”

order of the Highway Board, or rectify any account appealed against.

Costs of Appeal.

43. If the appellant is successful, the costs shall, unless the court otherwise orders, be paid by the Board, and shall be charged to the parishes within the jurisdiction of the Board other than the parish to which the appellant belongs in the same proportions in which such parishes contribute to the common fund of the Board.

If the appellant is unsuccessful, the Board, if the waywarden be the appellant, may charge the costs of the appeal to the parish to which the appellant belongs in the same manner as if they were expenses incurred in repairing the roads in such parish, and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the Board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the Board; but if some ratepayer other than the waywarden is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recoverable under "The Highway Act, 1862." (m)

Jurisdiction as to Districts in different Counties.

44. Places situate in different counties, and places situate partly in one county and partly in another county, when united in one highway district, shall, for all matters connected with the provisions of this Act relating to appeals to quarter sessions against accounts, be deemed to be subject to the jurisdiction of the justices of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which after the passing of this Act any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places were situate in such county. (n)

(m) See 25 & 26 Vict. c. 61, s. 47, *ante*.

(n) It is only with regard to appeals against accounts to which this provision applies.

SUPPLEMENTAL PROVISIONS.

In case of default of Highway Board appointing Officers.

45. If the Highway Board of a district make default in appointing a treasurer, clerk, and district surveyor, or any of such officers, in pursuance of the "Highway Act, 1862," (o) within three months after the day fixed by the justices for the holding of the first meeting of the Board, or within three months after a vacancy occurring in any of the said offices, the justices in general or quarter sessions assembled may, if they think fit, appoint a person to any of the said offices in respect of which the default has been made, and may fix the salary to be paid to the officer appointed; and any such appointment shall take effect and salary be recoverable in the same manner as if the officer appointed by the justices had been appointed by the Highway Board of the district; and it shall not be lawful for such Board, without the consent of the said justices, to remove any officer appointed by them under this section, or to lessen his salary within one year from the date of his appointment.

Jurisdiction of Justices in Petty Sessions.

46. The justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorized under the Highway Acts or any of them to exercise in special sessions; (p) and no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions in any matter merely on the ground that he is by virtue of his office a member of any Highway Board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such Board.

Power of Highway Board to make Improvements and borrow Money for the same, but previously to cause an Estimate to be made.

47. A Highway Board may make such improvements as

(o) See 25 & 26 Vict. c. 61, s. 12, *ante*.

(p) As regards the holding of special sessions for the highways, see 5 & 6 Wm. IV. c. 50, s. 45, in Glen's "Treatise on the Law of Highways," second edition.

are hereinafter mentioned in the highways within their jurisdiction, and may, with the approval of the justices in general or quarter sessions assembled, borrow money for the purpose of defraying the expenses of such improvements:

Previously to applying for the approval of the justices the Highway Board shall cause an estimate of the expense to be made, and two months at the least before making their application shall give notice of their intention so to do.

The notice shall state the following particulars :

- (1.) The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed :
 - (2.) The parish or parishes within the district by which the sum borrowed and the interest thereon is to be paid, and in case of more parishes than one being made liable to pay the principal and interest the annual amounts to be contributed by each parish towards the payment thereof :
 - (3.) The number of years within which the principal moneys borrowed are to be paid off, not exceeding twenty years, and the amount to be set apart in each year for paying off the same :
 - (4.) The sessions at which the application is to be made.
- Notice shall be given as follows :

- (1.) By transmitting a copy to the Clerk of the Peace for the county or division :
- (2.) By placing a copy of each notice for three successive Sundays on the church door of every church (*q*) of the parish or parishes on behalf of which such works are to be done, or, in case of any place not having a church, in some conspicuous position in such place. (*r*)

Upon the hearing of the application any person or persons may oppose the approval of the justices being given, and it shall be lawful for the justices to give or withhold their approval, with or without modification, as they think just.

All moneys borrowed in pursuance of this Act, together

(*q*) This must be construed as referring to the Established Church, *Ormerod v. Chadwick*, 16 M. & W. 367, and *Ex parte Warblington*, 18 Jur. 494.

(*r*) As for instance a dissenting chapel or other public building or place.

with the interest thereon, shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, after paying the sums due to the Highway Board on account of the district fund, in the same manner, so far as the creditor is concerned, as if the money had been borrowed on account of each parish alone; and the sums necessary to repay the said borrowed moneys, with interest, shall in each such parish be recoverable in the same manner as if they were expenses incurred by the Board in keeping in repair the highways of that parish. (s)

But it shall be the duty of the Highway Board, in case of any one parish paying more than its share of such borrowed money, or of the interest thereon, to make good to that parish the excess so paid out of the rates of the other parishes liable to contribute thereto.

The justices may from time to time make general orders in relation to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any moneys. (t)

(s) See ss. 33, 35, *ante*.

(t) In reply to an inquiry by a Highway Board whether they are empowered to erect a culvert, and charge the costs of erection to the parish in which it is erected as ordinary expenses can be charged, or whether they are compelled under s. 47 of the Highway Act, 1864, to borrow the money, Secretary Sir George Grey, stated that assuming the culvert to be such a work as the parish might itself execute if it were not within a highway district, and assuming that no money is borrowed for the purpose of constructing the culvert, the Board may make the culvert without acting under the provision of the 47th section of the Act. It was added, the Board would do well to obtain the assent of the vestry of the parish, though Sir George Grey does not think that assent legally necessary.—*40 Law Times*, p. 442.

APPROVAL OF QUARTER SESSIONS to the borrowing of money under 27 & 28 Vict. c. 101, s. 47.

Whereas Mr. , as counsel on the part of the Highway Board, having made application for the approval of this court to the borrowing by the said Highway Board of the sum of pounds for making certain improvements in the highways of the parish of in the said county, as set forth in the following notice:—

Notice is hereby given, that the Highway Board, having caused an estimate to be made of the expenses of the undermentioned improvements to the undermentioned highways in the parish of and within the highway district, intend to apply to the justices in quarter sessions assembled for their approval and sanction to borrow the sum of pounds sterling for the purposes and in manner following:—

1. Conversion of a road, &c. (setting out what is intended).

2. The said sum of pounds so proposed to be borrowed, and the interest thereon, is to be paid by the parish of , in the county of , and within the highway district, out of the highway rates for such parish.

3. The said sum of pounds is to be paid off in years from the date of receiving the approval of the justices in quarter sessions assembled for the borrowing of the same by the yearly payment of pounds on account and in payment of the said principal sum of pounds. The interest on the principal sum from year to year remaining due to be paid annually.

4. The application to borrow the above sum of pounds for the purposes aforesaid will be made at the quarter sessions in and for the county of , to be holden at , on the day of 18

Dated, &c.

_____, Clerk to the Highway Board.

Now, having heard the said notice read in open court, and being satisfied that the said application is *bond fide* made, and that all the conditions precedent mentioned in the statute in that case provided, and in the standing orders of this court, have been duly complied with, this court doth accordingly approve of the borrowing of the said sum of pounds by the said Highway Board for the purposes in the said notice mentioned, the same to be paid off in the manner therein stated.

By the Court,

_____, Clerk of the Peace.

CHARGE ON RATES.

This indenture, made, &c., reciting that by an Act., &c. (Highway Act, 1864), it is by the 49th section enacted, &c., that the inhabitants of the parish of , on the at a vestry meeting duly constituted, resolved, &c., that the Highway Board having satisfied themselves that it is essential that the said improvements should be made, and that they would be improvements coming within the meaning of the said section and the 48th section of the same Act, did at a vestry resolve, &c., and that an application be made to the next court of quarter sessions for the approval, &c., to a sum of being borrowed to defray the costs, that at the court of general quarter sessions of the peace, holden at , in and for the said county, on the day of application having been made by the said Highway Board in pursuance, &c., for the approval of the justices then and there assembled to the proposal, &c., it was ordered that the before-mentioned proposal, &c., be and was thereby approved by that court, and that hath consented to lend, &c., witnesseth that in pursuance of the said agreement, and in consideration of the sum of this day paid to the treasurer of the said Highway Board, the receipt, &c., the said Board doth hereby assign and set over unto the said his executors, administrators, and assigns, to be a first charge, &c., all and singular the rates leviable in the said highway parish of under or by virtue of the said Act, &c., to hold the same to the said, &c., until the said sum of with interest at the rate of on the said sum, or so much thereof as shall from time to time remain unpaid, be fully paid and satisfied;

Definition of Improvements.

48. The following works shall be deemed to be improvements of highways : (u)
- (1.) The conversion of any road that has not been stoned into a stoned road.
 - (2.) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges : (v)
 - (3.) The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair. (w)

Power for Parishes and Districts to contribute to Improvements.

49. Any parish may, with the consent of its waywarden, contribute to any improvements made in another parish, whether situate or not in the same district, if such first-mentioned parish consider such improvements to be for its benefit; (x) and any Highway Board may contribute to any improvements made in another district if such improvements are, in the opinion of the Highway Board of the first-mentioned district, for the benefit of their district. The contribution to be made by one parish to another shall be

and it is hereby declared that the interest on the said sum of £ , or so much thereof as shall from time to time remain unpaid, shall be paid by the said Highway Board and their successors to the said, &c., on the day of in every year. Also, that the said principal sum of shall be repaid to the said, &c., by the said in twelve equal yearly instalments of £ each, the first of such instalments to be paid on the next, and the second and each subsequent instalment on the same day in each subsequent year, until the whole sum of shall be fully paid and satisfied to the said his executors, &c. Given, &c.

(u) The highways to be improved must be highways repairable by the parish at large.

(v) County bridges are otherwise provided for. See Glen's "Highway Laws," second edition. See also 33 & 34 Vict. c. 73, s. 12, post, as to bridges on roads that were formerly turnpike roads.

(w) By 35 & 36 Vict. c. 85, s. 15, post, p. 147, the abolition of turnpike tolls by a Highway Board shall be deemed to be an improvement of the highways within the meaning of ss. 47, 48, & 50 of the Highway Act, 1864. See also 36 & 37 Vict. c. 90, ss. 15, 16, post, pp. 148, 149, as to power of Highway Boards to provide for the abolition of tolls on turnpike roads.

(x) It will be proper that the parishioners should, by a resolution in vestry, called after due notice, express their approval of the proposal.

payable in the same manner as if such contributions were due from the contributing parish in respect of expenses incurred in keeping in repair the highways of that parish, (y) and moneys contributed by one district to another district shall be payable out of the common fund of the contributing district.

Certain Clauses of 10 & 11 Vict. c. 16, incorporated.

50. The clauses of "The Commissioners' Clauses Act, 1847," with respect to mortgages to be created by the Commissioners, shall form part of and be incorporated with this Act, (z) and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses, "the Commissioners" shall mean "the Highway Board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned Act, or in the forms appearing in the second schedule annexed to this Act, or as near thereto as circumstances admit.

As to Encroachments on Highways.

51. From and after the passing of this Act if any person shall encroach by making or causing to be made any building, or pit, or hedge, ditch, or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on the side or sides of any carriageway or cartway within fifteen feet of the centre thereof, (a) or by removing

(y) See s. 32, *ante*.

(z) See ss. 75-88 of the Commissioners' Clauses Act, 1847, in the Appendix, *post*, pp. 151-155.

(a) Where a fence was erected upon the site of an open and unenclosed ditch, the property of the person erecting the fence, but which fence was within fifteen feet of the centre of the highway, it was held that there was no encroachment within the meaning of s. 51 of the 27 & 28 Vict. c. 101.—*Field v. Thorne*, 20 L. T. (N. S.) 563.

If an encroachment be made upon a highway by erecting a fence within fifteen feet from the centre thereof, the penalty must be proceeded for under 27 & 28 Vict. c. 101, s. 51, within six months after the erection of the fence, according to 11 & 12 Vict. c. 43, s. 11; and the offence is not a continuing offence.—*Ranking v. Forbes*, 34 J. P. 486.

The 51st section of 27 & 28 Vict. c. 101, only applies to persons who have committed the alleged encroachment upon the carriageway or cartway, or upon that part at the side which has been dedicated to the public. It does not relate to any ground which is not part of a highway;

any soil or turf from the side or sides of any carriageway or cartway, except for the purpose of improving the road, and by order of the Highway Board, or, where there is no Highway Board, of the surveyor, he shall be subject, on conviction for every such offence, to any sum not exceeding forty shillings, notwithstanding that the whole space of fifteen feet from the centre of such carriageway or cartway has not been maintained with stones or other materials used in forming highways ; and it shall be lawful for the justices assembled at petty sessions, upon proof to them made upon oath, to levy the expenses of taking down such building, hedge or fence, (b) or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish as aforesaid, or restoring the injury caused by the removal of such soil or turf, upon the person offending : Provided always, that where any carriageway or cartway is fenced on both sides no encroachment as aforesaid shall be allowed whereby such carriageway or cartway shall be reduced in width to less than thirty feet between the fences on each side. (c)

Power to contract for Materials for repairing Highways.

52. The Highway Board may and is hereby authorized to contract (d) for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining and keeping in repair all or any part of the highways of any parish within their highway district, for any period not exceeding three years. (e)

and the words, "the sides of any carriageway or cartway," mean any land forming part of the highway.—*Easton v. Richmond*, 25 L. T. (N. S.) 586, 41 L. J. M. C. 25, L. R. 7 Q. B. 69.

(b) The building, &c., cannot be forcibly taken down without a previous summons to the offender, so that he may have an opportunity of being heard.—See *Cooper v. Wandsworth*, 8 L. T. (N. S.) 278, 14 C. B. (N. S.) 180, 9 Jur. (N. S.) 1155, 32 L. J. (N. S.) M. C. 185.

(c) With reference to the subject of this section, see also s. 69 of 5 & 6 Wm. IV. c. 50, in Glen's "Highway Laws," second edition.

(d) As to stamp duty on such contracts, see *ante*, p. 98.

As to this clause, see also 33 & 34 Vict. c. 73, s. 11, with reference to a turnpike road thrown upon a highway district.

(e) The following case arose out of the Act of 1862:—In December, 1865, the defendants (the K. Highway Board) having jurisdiction under the Highway Act, 1862 (25 & 26 Vict. c. 61) over a district comprising, amongst other parishes, the parish of W., advertised for tenders for the supply of materials for repairing the roads in W. in 1866, in answer to which the plaintiff sent in a tender, which was accepted, whereupon a

8 & 9 Vict. c. 18, and 23 & 24 Vict. c. 106, incorporated.

53. A Highway Board for the purpose of improving the highways within their district may purchase such lands

contract for such supply was entered into by him with the defendants. In January, 1866, the defendants approved their surveyor's estimate of the approximate amount of expenditure for the several parishes, and by their direction a call of £768 was made upon the parish of W., one moiety of which the parish paid in February, 1866, the other moiety, after a dispute as to the liability, being paid by them in 1867.

On the 24th March, 1866, the parish of W. passed a resolution, under sec. 41 of the Highway Act, 1862, adopting the Local Government Act, 1858; and the statutory requirements having been complied with, a notice signed by the Home Secretary appeared in the *London Gazette* on the 11th May, 1866, that at the expiration of two months from the passing of such resolution the said Act of 1858 would have the force of law within the parish of W. On the 26th July, 1866, the defendant received notice from the Local Board of the adoption by the latter parish of the Local Government Act, 1858.

Up to that date (26th July, 1866) the defendants continued to repair the W. roads with materials supplied by the plaintiff to their surveyor's order, just as if W. had not adopted or intended to adopt the Local Government Act, 1858, and without being requested by the W. Local Board to do such repairs. The amount of materials supplied by the plaintiff for 1866 exceeded the amount contemplated by the estimate and contract at the beginning of the year; but there was nothing unusual in that fact, inasmuch as for the previous years—1864, 1865—the plaintiff, under contracts similar to the present one, had supplied and been paid by the defendants for materials so supplied by him, in excess of the amounts estimated for those years.

In an action for goods sold and delivered, &c., the plaintiff sought to recover the price of the materials so supplied by him from the 1st January to 26th July, 1866, which he contended the defendants were liable to pay, inasmuch as he had no notice of W. ceasing to be a member of the K. highway district, or that he was to discontinue supplying the materials; but, on the contrary, he continued to supply to order through the surveyor of the defendants materials which the defendants used; but, in any event, they were liable to pay him up to the 24th May, until which date the plaintiff alleged the parish of W. continued to be a member of the K. Highway Board. The defendants denied their liability, on the ground that by adopting the Local Government Act, 1858, on the 24th March, W. thenceforth ceased to form part of the K. highway district, and the defendants had no longer any power to repair roads in that parish, or to make calls on W. in order to pay the plaintiff; and that the plaintiff could not recover from the defendants for any portion of the materials supplied for W. subsequently to the 24th March.

Upon a special case, stating all the above facts, it was—

Held by the Court of Exchequer (Martin and Bramwell, B.B.) that the plaintiffs was entitled to recover from the defendants the

or easements relating to lands as they may require; (*f*) and "The Lands Clauses Consolidation Act, 1845," and the Act amending the same passed in the Session of the Twenty-third and Twenty-fourth years of the Reign of Her present Majesty, Chapter One hundred and six, shall be incorporated with this Act, with the exception of the clauses relating to the purchase of land otherwise than by agreement. (*g*)

In the construction of this Act and the said incorporated Acts, this Act shall be deemed to be the Special Act, and the Board shall be deemed to be the promoters of the undertaking, and the word "land" or "lands" shall include any easement in or out of lands.

whole amount of his claim, and that the defendants had not, in repairing the roads in W. between the 24th March and the 24th May, or between the 24th May and the 26th July, acted *ultra vires*, so as to prevent the plaintiff from recovering the price of the materials so supplied by him during either of those periods.

Per Martin, B.—It is a question of fact; and on the facts stated the court should find a verdict for the amount claimed as for goods *bond fide* supplied to the order of a person authorized by the defendants to give it, and used for their purposes.

Per Bramwell, B.—The words "upon such adoption being made," in section 41 of the Highway Act, 1862, must mean "upon such adoption coming into operation;" and therefore the resolution of the parish of W., on the 24th March, to adopt the Local Government Act, 1858, did not amount to an adoption of it, nor did the parish "cease to form part of the K. highway district" within that section until the expiration of two months from such date; and although on such adoption the parish ceased to form part of the district, yet it is by sec. 41 to be "subject to the payment of any contribution due from the parish to the Board at the time of such adoption." The defendants, therefore, were bound to repair the W. roads, if not to the end of the year, at least to the extent of the funds they had received for that purpose.

Quare.—Whether, if fresh funds had been necessary for the repairs after the 28th May, the Board would, under the circumstances, have had power to raise them in the way prescribed by sec. 21 of the Highway Act, 1862.—*Driver v. Kingston Highway Board*, 24 L. T. (N. S) 480.

(*f*) By 25 & 26 Vict. c. 61, s. 9, subsection 2, Highway Boards may acquire and hold lands for the purposes of the Highway Acts without licence in mortmain.

(*g*) The provisions of these Acts are too voluminous to be conveniently included in this work. They will be found *in extenso*, together with the decisions of the Courts on the various sections, in Glen's "Law of Railways."

FIRST SCHEDULE.

PROCEEDINGS OF HIGHWAY BOARDS.

- (1.) The Board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the Board, as they think fit, subject to the following conditions :—
- (a.) The first meeting, after the formation of the district, shall be held at the time and place fixed by the order of the justices in that behalf ; (h)
 - (b.) One ordinary meeting shall be held in each period of four months, and of such meetings one shall be held on some day between the seventh and fourteenth days of April ; (i)
 - (c.) An extraordinary meeting may be summoned at any time, on the requisition of three members of the Board, addressed to the Clerk of the Board ;

(h) See 27 & 28 Vict. c. 101, s. 10, *ante*, and note to 25 & 26 Vict. c. 61, s. 15, as to the board-room of the Highway Board. By 26 Vict. c. 17, s. 6, "where any district under the Public Health Act, 1848, and the Local Government Act, 1858, or either of such Acts, or any other place, is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the Highway Board, be deemed to be within such highway district."

Where the justices by their final order fixed the first day of meeting of the Highway Board for the Thursday after the 25th March, and no day was specially named for the election of waywardens, and, according to the custom of the parishes in the district, it had been usual to elect highway surveyors on the 25th March, or within two or three days thereafter, it was held that the order was not bad because it did not provide for fourteen days elapsing after the 25th March, but provided only for five clear days, though it would have been better to give more time.—*Reg. v. Lindsey* 6 B. & S. 892, 12 Jur. (N. S.) 314, 35 L. J. M. C. 90, 13 L. T. (N. S.) 524.

(i) The meeting is to be held *between* these days; both, therefore, must be excluded.

- (d.) The quorum to be fixed by the Board shall consist of not less than three members;
- (e.) Every question shall be decided by a majority of votes of the members voting on that question;
- (f.) The names of the members present at a meeting shall be recorded.
- (2.) The Board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the Board as hereafter mentioned, appoint one of their members to be chairman, and one other of their members to be a vice-chairman, for the year following such choice.
- (3.) If any casual vacancy occur in the office of chairman or vice-chairman, the Board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy; and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.
- (4.) If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be a chairman of such meeting.
- (5.) In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote. (j)
- (6.) All orders of the Board for payment of money, and all precepts issued by the Board, shall be deemed to be duly executed if signed by two or more members of the Board authorized to sign them by a resolution of the Board, (k) and countersigned by the clerk; but it shall

(j) The chairman, if he intends to vote on the question before the Board, should give his vote immediately after he has counted the votes of the other members present, and before he declares from the chair the numbers voting on each side of the question. If, after counting them, he finds that the votes are equal, he should give a second or casting vote.

(k) The most convenient course will be for the Board, at their first

not be necessary, in any legal proceeding, to prove that the members signing any such order or precept were authorized to sign them, and such authority shall be presumed until the contrary is proved.

SECOND SCHEDEULE.

FORMS.

Form of Mortgage.

NOTE.—*See section 50 of Act.*

NOTE.—*Highway Rate includes Poor Rate, when the Highways are maintained out of Poor Rate.*

NOTE.—*See section 33 of Act.*

NOTE.—*Highway Parish means every parish that separately returns a waywarden or waywardens to the Highway Board. See section 3 of Act.*

NOTE.—*The mortgage must be under the Corporate Seal of the Board, and duly stamped. See Commissioners' Clauses Act, 10 Vict. c. 16, s. 75.*

The Highway Board of the district, in consideration of pounds paid to the treasurer of the said Board by *A. B.* of , assigns unto the said *A. B.*, his executors, administrators, and assigns, such proportion of the highway rates leivable in the parish or parishes of [name the parishes] as the said sum of

pounds bears to the whole sum borrowed on the credit of the said rates, to hold to the said *A. B.*, his executors, administrators, and assigns, until the said sum of pounds, with interest at the rate of pounds per centum per annum, is paid.

The interest on this mortgage will be paid at on the day and days of in every year.

The principal will be paid at on the day of Given under our Corporate Seal this day of

18 .

annual meeting after their election, to pass a resolution nominating the members of the Board who are to sign orders for payment of money during the year, instead of doing so at each meeting.

Transfer of Mortgage by Indorsement.

The within-named *A. B.*, in considera-
tion of the sum of
pounds paid to him by *C. D.* of
hereby transfers to the said
C. D., his executors, administrators, and to *Vict. c. 16.*
assigns, all his interest in the moneys
secured by the within-written mortgage and in the within-
named rates.
NOTE.—The transfer
must be under Seal
and duly stamped. See
section 77 of Commis-
sioners' Clauses Act,

In witness whereof the said A. B. has hereunto set his
hand and seal this day of

TURNPIKE CONTINUANCE ACTS.

28 & 29 Vict. cap. 107.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN.

[5TH JULY, 1865.]

Application of Secs. 118 & 124 of 3 Geo. IV. c. 126, to Turnpike Roads that have become ordinary Highways.

2. The sections relating to encroachments on turnpike roads contained in the Act of the third year of the reign of King George the Fourth, chapter one hundred and twenty-six, and numbered respectively one hundred and eighteen, and one hundred and twenty-four, shall continue in force in relation to any road which, having been a turnpike road, may, at any time after the passing of this Act, become an ordinary highway, in the same manner as if such road had continued to be a turnpike road; and in the construction of the said section, the Highway Board shall be deemed to be the trustees or commissioners where the road is within the jurisdiction of a Highway Board, and in other cases the surveyor, or other local authority having the care of the road, shall be deemed to be such trustees or commissioners.

Meetings of Trustees or Commissioners.

3. It shall be the duty of the trustees or commissioners of a turnpike road that is about to become or has become an ordinary highway, to hold such meetings as may be necessary for the complete winding up of the affairs of their trust or commission, and any such meeting shall be legal if held at any time within two months after the time limited for the expiration of their trust or commission. (1)

(1) See 34 & 35 Vict. c. 115, s. 18, post, which amends this enactment.

29 & 30 Vict. cap. 105.

**AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT
BRITAIN, AND TO MAKE FURTHER PROVISIONS CON-
CERNING TURNPIKE ROADS.**

[10TH AUGUST, 1866.]

Amendment of 4 Geo. IV. c. 95, s. 57, and Provisions respecting Toll-houses which have become useless.

2. Whereas by the provisions of an Act of the fourth year of the reign of his late Majesty King George the Fourth, chapter ninety-five, the trustees or commissioners of a turnpike road are prohibited from selling toll-houses not required for the purposes of the road, and are bound to pull the same down, and to sell the materials thereof: And whereas it is expedient to amend the said provisions: Be it enacted as follows:—

1. If the road would be improved by the addition thereto of the whole or any part of the site of the toll-house, or of any garden or land belonging thereto, then the trustees or commissioners of the road shall, instead of selling the whole or such part (as the case may require), cause the same to be added to the road, and shall cause any building standing on the ground so added to be pulled down, and the materials thereof to be sold and removed.

2. Where the trustees or commissioners of a turnpike road are authorized to sell the site of a toll-house, they may, notwithstanding anything contained in the last-mentioned Act, sell the toll-house and other buildings standing on such site, unless required to pull them down by the person to whom a right of pre-emption is given by any Acts relating to turnpike roads. Subject as aforesaid, the provisions of the said Act relating to the selling of toll-houses shall be of the same force as if this Act had not passed. (m)

(m) Amended by 34 & 35 Vict. c. 115, s. 17.

30 & 31 Vict. cap. 121.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS. [20TH AUGUST, 1867.]

Trustee of Turnpike Road holding Shares in Companies which contract to supply Gas or Water to the Road not to be liable to Penalty.

2. No trustee or commissioner of any turnpike road shall be liable to any penalty or forfeiture by reason of his being a proprietor or holder of a share in any gas company or water company which contracts with the trustees or commissioners of such turnpike road for the supply of gas or water for the purposes of such road, or of the toll-houses thereon.

On expiration of Trust Balance to be paid to Parishes.

3. The trustees or commissioners of a turnpike road which shall hereafter become an ordinary highway shall, as soon as may be after the expiration of their trust, distribute the balance of any moneys remaining in their hands amongst the parishes upon which will fall the liability to repair the roads of such trust, in proportion to the mileage of such roads in each parish, or, if such road shall be situated in any highway district or highway districts, then the trustees shall pay over such balance to the treasurer or treasurers of such highway district or highway districts *in proportion to the mileage of such road in each such highway district, to be distributed in manner aforesaid.* (n)

Provision as to Drivers of Carts riding on Carriages on Turnpike Roads.

4. From and after the passing of this Act, no driver of any waggon or cart of any kind shall be liable to any penalty for riding upon such carriage in any turnpike road, provided such driver shall not ride upon the shafts of such carriage, but shall carefully drive such carriage by means of

(n) Amended by the 31 & 32 Vict. c. 99, s. 8, *post*, and 34 & 35 Vict. c. 115, s. 16.

The words in *italics* are repealed by 34 & 35 Vict. c. 115, s. 16, *post*, p. 142.

reins held in his hands, such reins being attached to every horse drawing the same.

Ratepayers to have access to Accounts of Trust where Repairs borne by Parish.

5. Where the repairs of a turnpike road shall be thrown wholly or partly on a parish, any ratepayer of that parish shall, on payment of one shilling to the clerk of the trust, and on any day within twenty-one days of the general annual meeting of the commissioners of such trust, have access, between the hours of ten of the clock in the morning and two of the clock in the afternoon, to the accounts of such trust, and shall be empowered to examine and take a copy of the accounts.

Provision for Audit of Accounts in cases herein named.

6. Where at any general annual meeting of the trustees of a turnpike road three or more trustees shall state in writing their desire that there should be an audit other than the audit by the trustees themselves of the accounts of such trust, the clerk of such trust shall apply to the principal Secretary of State for the Home Department (o) for an audit of the accounts of that year, and the Secretary of State for the Home Department (o) shall direct an audit accordingly, and shall make such regulations for holding such audit as shall seem to him desirable: Provided always that the expenses of, or incident to such audit, shall be deemed expenses incurred by the trustees of the turnpike road.

31 & 32 Vict. cap. 99.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISION CONCERNING TURNPIKE ROADS.

[31ST JULY, 1868.]

Extension of the operation of the Act of 12 & 13 Vict. c. 46.

6. Whereas provision is made by the Act of the session of the twelfth and thirteenth years of the reign of Her

(o) Now the Local Government Board, see 35 & 36 Vict. c. 79, s. 36, *post*, p. 145.

present Majesty, for the union of turnpike trusts in cases where the general annual meetings of the trustees of two or more turnpike roads have been held at the same place, or places distant not more than ten miles from each other: And whereas it is expedient to extend the operation of the said Act: Be it enacted, That the first section of the said Act shall be construed as if the word "twenty" were substituted therein for the word "ten."

If Road in repair compensation may be given to Officers of expired Trust.

7. Where a turnpike road shall have become an ordinary highway, then, upon a certificate being given by two justices that such road was at the time at which it became a highway in complete and effectual repair, the trustees or commissioners of such road, at any meeting held by them, in pursuance of the third section of "The Annual Turnpike Acts Continuance Act, 1865," may, out of any balance remaining in their hands after payment of all liabilities, award, if they see fit, to any person or persons whose offices expire with the trust, and who have held such offices for not less than ten years immediately preceding such meeting, such compensation as they may think just, not exceeding in any case the amount of three years' salary. (p)

30 & 31 Vict. cap. 121, sec. 3, to apply to Roads which became ordinary Highways previous to passing of Act.

8. The third section of the Act of the session of the thirtieth and thirty-first years of Her present Majesty, chapter one hundred and twenty-one, shall apply to all roads which, having been turnpike roads, have become ordinary highways previous to the passing of the said Act. (q)

(p) See 33 & 34 Vict. c. 73, s. 13, with regard to turnpike roads extending into two counties.

(q) See 34 & 35 Vict. c. 115, s. 16, *post*, p. 142.

32 & 33 Vict. cap. 90.

**AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT
BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS,
AND TO MAKE FURTHER PROVISION CONCERNING TURN-
PIKE ROADS.**

[9TH AUGUST, 1869.]

Explanation of 3 & 4 Wm. IV. c. 80.

7. Whereas by an Act of the session of the third and fourth years of the reign of His late Majesty King William the Fourth, chapter eighty, intituled "An Act requiring the Annual Statements of Trustees or Commissioners of Turnpike Roads to be transmitted to the Secretary of State, (*r*) and afterwards laid before Parliament," and the several enactments contained in previous Acts therein referred to, and by an Act of the Session of the twelfth and thirteenth years of the Reign of Her present Majesty, chapter eighty-seven, intituled "An Act to continue certain Turnpike Acts in Great Britain for limited periods, and to make certain provisions respecting Turnpike Roads in England," certain provisions are made in relation to the statements of accounts of turnpike trusts, and to enable one of Her Majesty's Principal Secretaries of State (*r*) to elucidate such statements and make abstracts thereof, and prepare observations thereon to be laid before Parliament: And whereas divers Local Acts of Parliament relating to turnpike trusts have expired during the last five years, and doubts have arisen whether the said Acts and the enactments therein referred to apply after the expiration of such Local Acts: Be it enacted, that where any Local Act of Parliament relating to any Turnpike Trust has expired within the period of five years preceding the date of the passing of this Act, or may hereafter expire, the said Acts of the sessions of the third and fourth years of the reign of His late Majesty William the Fourth, chapter eighty, and the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighty-seven, and the enactments therein referred to, shall be deemed, in the same manner as if such Local Act had not expired, to apply in the case of such trust, and the officers thereof, until such information may have been furnished to the said Secretary of State (*r*) as will, in his opinion, enable him to elucidate the statement

(*r*) Now the Local Government Board. See 35 & 36 Vict. c. 79, s. 36, *post*, p. 145.

and make the abstract thereof, and prepare his observations thereon, and to lay the same before Parliament as required by the said Acts or one of them.

33 & 34 Vict. cap. 73.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS. [9TH AUGUST, 1870.]

Maintenance of certain Highways.

10. With regard to any highway which, within seven years previous to the passing of this Act, has ceased, or which hereafter may cease to be a turnpike road, the cost of maintaining so much thereof as passes through any highway district constituted under the "Highway Acts, 1862 and 1864," shall, after the thirty-first day of December, one thousand eight hundred and seventy, or after the date of the said highway ceasing to be a turnpike road, whichever shall last happen, be a charge on the common fund of such highway district, and shall be annually provided for in the same manner as is enacted in the thirty-second section of the "Highway Act, 1864," in respect to the salaries of the officers appointed for the district.

Stone, &c., to be raised within any Highway District.

11. It shall be lawful for any surveyor of any highway district to raise stone or other material within any highway district for the repair of any turnpike road which may be thrown upon any highway district by the preceding clause of this Bill (*sic*) in the same manner and with the like powers, and on payment of such compensation for the same, as the trustees for a turnpike road are now empowered by law to do. (s)

Bridges to become County Bridges.

12. Where a turnpike road shall have become an ordinary highway, all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly.

(s) As to these powers, see 3 Geo. IV. c. 126, ss. 97, 98, 100, 102, 103; 4 Geo. IV. c. 95, ss. 56, 71; and 7 & 8 Geo. IV. c. 24, s. 15.

5 & 6 Wm. IV. c. 50, s. 21.

Provided that for the purposes of this Act such bridges shall be treated as if they were bridges built subsequently to the passing of the Act of the fifth and sixth years of His late Majesty King William the Fourth, chapter fifty, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England."

Turnpike Roads extending into Two Counties.

13. Where a turnpike road extending into two or more counties shall become an ordinary highway, in lieu of the certificate required by the seventh section of "The Annual Turnpike Acts Continuance Act, 1868," (t) to be given by two justices before the trustees can award compensation to their officers, there shall be required a certificate by two justices of each county into which such turnpike road may extend, and each of such certificates shall certify that such part of the road as lies within the county for which the justices giving the certificate are acting, was, at the time at which it became an ordinary highway, in complete and effectual repair.

34 & 35 Vict. cap. 115.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS.
[21ST AUGUST, 1871.]

Contribution of Highway Board to the repair of a Turnpike Road to be charged to the District Fund—26 & 27 Vict. c. 94, s. 1.

15. When, in accordance with the provisions of "The Annual Turnpike Acts Continuance Act, 1863," (u) an order has been made on the Highway Board of a district to contribute to the repair of a turnpike road, any moneys paid by the Board in pursuance of such order shall be deemed to be expenses incurred for the common use or benefit of the

(t) See 31 & 32 Vict. c. 99, s. 7, *ante*, p. 138.

(u) See 26 & 27 Vict. c. 94, s. 1, *ante*, p. 65.

several parishes within such district, and shall be charged accordingly to the district fund. (v)

So much of the said Act as prescribes that such moneys shall be deemed expenses incurred by the Board in respect of the repair of the highways in the parish in which the turnpike road is situated for which such contribution is required, is hereby repealed.

Moneys paid from a Turnpike Trust on its expiration to the Treasurer of a Highway Board to go to District Fund for the common use of District—30 & 31 Vict. c. 121, s. 3, 31 and 32 Vict. c. 99, s. 8.

16. Where, in accordance with the provisions of "The Annual Turnpike Acts Continuance Act, 1867," (w) or "The Annual Turnpike Acts Continuance Act, 1868," (x) the trustees or commissioners of a turnpike road, which has become an ordinary highway, pay any of the moneys remaining in their hands on the expiration of their trust to the treasurer of any highway district in which such road is situated, such moneys shall be placed to the credit of the district fund, for the common use or benefit of the several parishes within such district.

So much of the said "Annual Turnpike Acts Continuance Act, 1867," as prescribes that such moneys, after having been paid to the treasurer of a highway district, shall be distributed amongst the parishes within such district in proportion to the mileage of such road in each parish, (w) is hereby repealed.

On expiration of a Trust, Toll-houses, &c., not to be sold without consent of Highway Authority—29 & 30 Vict. c. 105, s. 2.

17. The trustees or commissioners of a turnpike trust about to expire shall not sell any toll-house, or the site thereof, or any part of the site, or any part of any garden or land belonging thereto, without giving notice in writing not later than two months before the expiration of such trust to

(v) Now, by 35 & 36 Vict. c. 85, s. 14, *post*, p. 146, Highway Boards may voluntarily repair turnpike roads at the cost of the district fund.

(w) See 30 & 31 Vict. c. 121, s. 3, *ante*, p. 136.

(x) See 31 & 32 Vict. c. 99, s. 8, *ante*, p. 138.

the highway authority, on which an order might under the provisions of the Act of the session of the fourth and fifth years of the reign of Her present Majesty, chapter fifty-nine, or "The Annual Turnpike Acts Continuance Act, 1863," be made for contribution to the repair of such road where it adjoins the said premises; and such authority, if of opinion that the road would be improved by the addition thereto of such premises or any part thereof, may, within one month of such notice, require the trustees or commissioners to make such improvement, and it shall be incumbent on such trustees or commissioners to give effect to such requisition.

Provided that if the trustees or commissioners feel aggrieved at such requisition, they may appeal to the general or quarter sessions having jurisdiction in the place wherein such premises are situated, at the next court, held not less than fifteen days after the receipt of such requisition. The appellants shall, within seven days after receipt of such requisition, give a notice in writing to the highway authority of their intention to appeal.

The court may adjourn the appeal, and at the hearing thereof may make such order in the matter, and also such order as to costs, to be paid by either party, as the court thinks just.

No order made in pursuance of this section shall be quashed for want of form, or be removed by *certiorari* or otherwise into any superior court.

Any sale or agreement for any sale made with a view to evade the provisions of this section shall be void; provided that nothing herein contained shall invalidate any sale or contract for sale *bonâ fide* made before the passing of this Act.

Extension of 28 & 29 Vict. c. 107, s. 3.

18. It shall be lawful for one of Her Majesty's principal Secretaries of State, (*y*) from time to time, at his discretion, to prolong the period during which the trustees or commissioners of a turnpike road that is about to become or has become an ordinary highway, may hold meetings for the winding up of the affairs of their trust or commission.

(*y*) Now the Local Government Board. See 35 & 36 Vict. c. 79, s. 36, *post*, p. 145.

Provision for extinction of unclaimed Mortgage Debts.

19. The trustees or commissioners of a turnpike trust about to expire shall publish a notice specifying a time within which claims in respect of any principal moneys or interest secured upon the revenues of such road may be sent in writing to the clerk of the trust.

Such notice shall be published once in the London daily *Times* newspaper, and twice (once in each of two successive weeks) in a newspaper usually circulated in the county or counties in which the road is situated.

The first publication of such notice shall be made, as nearly as may be, two months before the expiration of the trust.

The time so to be specified shall not be earlier than two or later than three months from the date of the first publication of such notice.

After the expiration of the time specified in the notice, no claim shall be received for any such principal moneys or interest, and so much of the mortgage debt of the said trust as consists of principal moneys or interest for which no claim has been sent in shall be extinguished.

*4 Geo. IV. c. 95, s. 75, to be repealed, and the Provisions of
27 & 28 Vict. c. 101, s. 25, to be enacted.*

20. The seventy-fifth section of the Act of the fourth year of his late Majesty George the Fourth, chapter ninety-five, shall be repealed on and after the first day of the year one thousand eight hundred and seventy-two; and instead thereof be it enacted: If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying or lying about any turnpike road, or across any part thereof, or by the sides thereof (except on such parts of any turnpike road as pass over any common, or waste, or unenclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the turnpike road where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the parish where the same shall be found, or to such other

place as may have been provided for the purpose : Provided always, that no owner of any such animal shall in any case pay more than thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorized keeper of the pound : Provided also, that nothing in this Act shall be deemed to extend to take away any right of pasture which may exist on the sides of any turnpike road. (z)

35 & 36 Vict. cap. 79.

AN ACT TO AMEND THE LAW RELATING TO PUBLIC HEALTH.
[10TH AUGUST, 1872.]

Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to Local Government Board.

36. From and after the passing of this Act, all powers, duties, and acts vested in, imposed on, or required to be done by or to one of Her Majesty's principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts, and bridges in England and Wales, shall be transferred to, imposed on, and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of this Act, or as near thereto as circumstances admit.

35 & 36 Vict. cap. 85.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS.
[10TH AUGUST, 1872.]

Provisions in "Railway Clauses Consolidation Act, 1845," relating to Turnpike Roads, to continue to apply to such Roads on their becoming ordinary Highways.—8 & 9 Vict. c. 20, ss. 46, 47.

13. Such of the provisions of the "Railway Clauses Con-

(z) See 27 & 28 Vict. c. 101, s. 25, ante, p. 101.

solidation Act, 1845," with respect to the crossing of roads and other interference therewith as relate to turnpike roads shall continue in force in relation to any road which, having been a turnpike road, may, at any time after the passing of this Act, become an ordinary highway, in the same manner as if such road had continued to be a turnpike road ; and in the construction of the said provisions, when applied to any such road as aforesaid, if the road is within the jurisdiction of a Highway Board, such Highway Board shall be deemed to be the trustees or commissioners thereof ; and in other cases the surveyor or other local authority having the care of the road shall be deemed to be such trustees or commissioners. (a)

Highway Board may voluntarily repair Turnpike Road at the cost of District Fund.—26 & 27 Vict. c. 94, s. 1 ; 34 & 35 Vict. c. 115, s. 15.

14. A Highway Board may, if they think fit, either repair or contribute to the repair of a turnpike road within their district, notwithstanding that no order of contribution may have been made upon the Board in pursuance of the first section of the "Annual Turnpike Acts Continuance Act, 1863;" (b) and all moneys so expended by the Board shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly to the district fund ; and this section shall be deemed to take effect from the first of January, one thousand eight hundred and seventy-two.

Power to Highway Boards to pay off Debts on Turnpikes.

15. For the purpose of facilitating the abolition of tolls on any turnpike road within or passing through a highway district, the Highway Board and the trustees of the turnpike road may mutually agree that the Highway Board shall take upon themselves the maintenance and repair of such turnpike road, or so much thereof as is within their district, and thereupon the Highway Board shall pay off and discharge, where the turnpike is wholly within the highway district, the

(a) See Glen's "Law of Railways," vol. 2, for the clauses of the "Railway Clauses Consolidation Act, 1845," referred to in this section ; and also for the decisions of the Courts on those clauses.

(b) See 26 & 27 Vict. c. 94, s. 1, *ante*, p. 65.

debt that may remain and be subsisting on the trusts of such turnpike road, or such sum by way of composition, but in full discharge of such debt, as the Local Government Board may, after inquiry, determine; and where the turnpike is not wholly within such district, such sum as the Local Government Board may in like manner determine as an equitable proportion of such debt or composition for the same.

The abolition of such tolls shall be deemed to be an improvement of highways within the meaning of sections forty-seven, forty-eight, and fifty of the "Highway Act, 1864," (c) and for such purpose the Highway Board may borrow money in accordance with the provisions of those sections, subject to the following provisions, viz. :—

That the improvement shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund.

36 & 37 Vict. cap. 90.

**AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT
BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS,
AND FOR OTHER PURPOSES CONNECTED THEREWITH.**

[5TH AUGUST, 1873.]

Repeal (in part) of 4 Geo. IV. c. 95, s. 39.

13. So much of the thirty-ninth section of the Act of the session of the fourth year of the reign of His late Majesty King George the Fourth, chapter ninety-five, as requires that no order or determination at a meeting of the trustees once made, agreed upon, or entered into, shall be revoked or altered at any subsequent meeting, unless such revocation or alteration shall be agreed to be made by a greater number of trustees or commissioners than concurred in the making of any such order or determination, is hereby repealed.

Provided that no such order or determination shall be revoked or altered at any subsequent meeting, unless notice in writing, signed by the clerk to the trustees or commissioners, of the intention to make such revocation or altera-

(c) See *ante*, pp. 121, 125, 126.

tion has been sent by post, or delivered to all the trustees or commissioners at least seven days before the meeting at which such revocation or alteration is made.

Amendment of 3 Geo. IV. c. 126, s. 55.

14. Where a turnpike trust is about to expire, and the tolls are let for a term which will expire before the termination of the trust, it shall be lawful for the trustees of such turnpike trust to arrange with the lessee of the tolls for an extension of the term for which such tolls have been let, until the period appointed for the expiration of the trust, not exceeding twelve months, notwithstanding the provision of the fifty-fifth section of the Act passed in the third year of the reign of His late Majesty King George the Fourth, chapter one hundred and twenty-six, limiting the lease of such tolls to three years.

Power to Local Government Board to assess value of Debts.

15. If any Highway Board or other local authority shall be desirous of taking upon themselves the maintenance and repair of the roads of any turnpike trusts within or passing through their districts, such Highway Board or other local authority may, if not less than one-half in length of such road is within the district, apply to the Local Government Board to determine the value of the existing debt and other liabilities (*d*) of such turnpike trust, and the Local Government Board may, by order made after such inquiry and the publication of such notice as they may think sufficient, determine the value of such debt and liabilities; (*d*) and the trustees and other persons interested in such debt and liabilities shall accept a sum equivalent to the value so determined as a full and complete discharge of such debt and liabilities; and from and after a day to be fixed by the said Local Government Board no tolls shall be levied on the roads theretofore included within the district of such turnpike trust; and in case the said turnpike trust shall extend beyond the district of the Highway Board or local authority making the application as aforesaid, it shall be lawful for the said Local Government Board to apportion the value of the debts and liabilities of such turnpike trust, so determined as

(*d*) See 37 & 38 Vict. c. 95, s. 88, *post*, p. 150.

aforesaid, between the several local authorities through whose districts the roads of such turnpike trust extend, and each such local authority shall raise and pay to the trustees the amount apportioned to such authority.

Provided that an order made under this section shall not take effect until the expiration of one calendar month after the same has been published in the *London Gazette* and some local newspaper, circulating in the locality of the turnpike trust affected thereby; and if two-thirds in number and value of the creditors of the trust shall give notice in writing to the Local Government Board before such order takes effect, that they object to the same, the order shall be provisional only, and shall not come into operation until it has been confirmed by Parliament.

Power to raise Money for Abolition of Tolls.

16. The abolition of the tolls on a turnpike road in consequence of any such order as aforesaid, shall in the case of a highway district be deemed to be an improvement of highways within the meaning of sections forty-seven, forty-eight, and fifty of "The Highway Act, 1864," (e) and for such purpose the Highway Board may borrow money in accordance with the provisions of those sections subject to the following provisions, viz.:—That the improvement shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund.

37 & 38 Vict. cap. 95.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, AND TO REPEAL CERTAIN OTHER TURNPIKE ACTS; AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[7TH AUGUST, 1874.]

Repair of Roads by Highway Authorities in certain Cases.

10. Where by any Annual Turnpike Acts Continuance Act it is or shall be provided that no money shall be expended in the repair of any turnpike road, such turnpike road shall be deemed to be a highway, and shall be repair-

(e) See ante, pp. 121, 125, 126.

able as such; provided that where such highway, or any portion thereof, shall pass through any highway district constituted under the Highway Acts, 1862 and 1864, the cost of maintaining such highway, or any such portion thereof, shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly on the district fund.

*Apportionment of Bonded Debt under 36 & 37 Vict.
c. 90, s. 15.*

11. Where the Local Government Board in exercise of the discretionary power conferred upon them by section fifteen of "The Annual Turnpike Acts Continuance Act, 1873," make an order determining the value of the existing debt and liabilities of a turnpike trust, the Board may by the same order declare to whom and in respect of what claim or claims the whole or any part of the value of such debt and liabilities is to be paid.

The term "existing debt and other liabilities" used in the said fifteenth section of "The Annual Turnpike Acts Continuance Act, 1873," means the bonded or mortgage debt of a turnpike trust, and any unpaid interest due thereon.

APPENDIX.

THE COMMISSIONERS' CLAUSES ACT, 1847.

10 VICT. C. 16.

AN ACT FOR CONSOLIDATING IN ONE ACT CERTAIN PROVISIONS USUALLY CONTAINED IN ACTS WITH RESPECT TO THE CONSTITUTION AND REGULATION OF BODIES OF COMMISSIONERS APPOINTED FOR CARRYING ON UNDER-TAKINGS OF A PUBLIC NATURE. [23RD APRIL, 1847.]

MORTGAGES.

And with respect to the mortgages to be executed by the Commissioners, be it enacted as follows :—

Form of Mortgage.

LXXV. Every mortgage or assignation in security of rates or other property authorized to be made under the provisions of this or the Special Act shall be by deed duly stamped, in which the consideration shall be truly stated; and every such deed shall be under the common seal of the Commissioners if they be a body corporate, or if they be not a body corporate shall be executed by the Commissioners, or any five of them, and may be according to the form in the Schedule (B) to this Act annexed or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such moneys, or of the dates of any such mortgages or assignations respectively.

Register of Mortgages to be kept and to be open to inspection.

LXXVI. A register of mortgages or assignations in security shall be kept by the Clerk to the Commissioners, and where by

the Special Act the Commissioners are authorized or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignations in security, and within fourteen days after the date of any mortgage or assignation in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignation in security without fee or reward.

Transfers of Mortgages.

LXXVII. Any person entitled to any such mortgage or assignation may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be duly stated; and every such transfer may be according to the form in the Schedule (C) to this Act annexed, or to the like effect.

Register of Transfers to be kept.

LXXVIII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the Commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignation in security, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignation in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties*: and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignation so transferred, or any money thereby secured.

Interest on Mortgages to be paid Half-yearly.

LXXIX. Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

Power to borrow Money at a lower rate of Interest, to pay off Securities at a higher rate.

LXXX. If the Commissioners can at any time borrow or take

up any sum of money at a lower rate of interest than any securities given by them and then be (*sic*) in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge such securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorized to mortgage or assign in security under this or the Special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed on mortgage or assignation in security.

Repayment of Money borrowed at a Time and Place agreed upon.

LXXXI. The Commissioners may, if they think proper, fix a period for the repayment of all principal moneys borrowed under the provisions of this or the Special Act, with the interest thereof, and in such case the Commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the Commissioners.

Repayment of Money borrowed when no Time or Place has been agreed upon.

LXXXII. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose; and in the like case the Commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the Commissioners, and if given by the Commissioners shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the Commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London Gazette* if the office of the Commissioners is in England, the *Edinburgh Gazette* if it is in Scotland, or in the *Dublin Gazette* if it is in Ireland.

Interest to cease on expiration of Notice to pay off a Mortgage Debt.

LXXXIII. If the Commissioners shall have given notice of

their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the Commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

Moneys borrowed on security of Rates to be paid off in a limited Period.

LXXXIV. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the Commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, and if no part be prescribed one-twentieth part of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal moneys so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of Exchequer Bills or other Government securities, or in Scotland deposited in one of the banks there incorporated by Act of Parliament or Royal Charter, and to be increased by accumulation in the way of compound interest or otherwise until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the Commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned.

Mode of paying off Mortgage Debts.

LXXXV. Whenever the Commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

Arrears of Interest, when to be enforced by appointment of a Receiver—Arrears of Principal and Interest.

LXXXVI. Where by the Special Act the mortgagees or assignees in security of the Commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them, by the appointment of a

receiver, then, if within thirty days after the interest accruing upon any such mortgage or assignation in security has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee or assignee in security may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage or assignation in security has become payable, and after demand thereof in writing the same be not paid, together with all interest due in respect thereof, the mortgagee or assignee in security, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts, may, if his debt amount to the prescribed sum, alone, or if his debt do not amount to the prescribed sum, he may in conjunction with other mortgagees or assignees in security, whose debts being so in arrear, after demand as aforesaid, together with his amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

As to the Appointment of Receiver.

LXXXVII. Every application for a receiver in the cases aforesaid shall in England or Ireland be made to two justices, and in Scotland to the sheriff, and on any such application such justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates or sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Account Books to be open to the inspection of Mortgagees.

LXXXVIII. The books of account of the Commissioners shall be open at all seasonable times to the inspection of the respective mortgagees or assignees in security of the Commissioners, with liberty to take extracts therefrom without fee or reward.

(Schedules B and C contain forms of mortgage and of transfer of mortgage; but they are superseded by the forms in the second schedule to 27 & 28 Vict. c. 101, *ante*, p. 132.)

COMMON LAW PROCEDURE ACT, 1854.

17 & 18 VICT. C. 125.

AN ACT FOR THE FURTHER AMENDMENT OF THE PROCESS,
PRACTICE, AND MODE OF PLEADING IN AND ENLARGING
THE JURISDICTION OF THE SUPERIOR COURTS OF COM-
MON LAW AT WESTMINSTER, AND OF THE SUPERIOR
COURTS OF COMMON LAW OF THE COUNTIES PALATINE
OF LANCASTER AND DURHAM. [12TH AUGUST, 1844.]

Power to Court or Judge to direct Arbitration before Trial.

III. If it be made to appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court [or, in country causes, to the judge of any county court, (f)] upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

Special Case may be stated, and Question of Fact tried.

IV. If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge, upon the consent of both parties, as hereinbefore provided, (g) it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

(f) 21 & 22 Vict., c. 74, s. 5, repeals so much of this Act as enables the judge to refer a cause to a county court judge.

(g) See s. 1 of the Act.

Arbitrator may state Special Case.

V. It shall be lawful for the arbitrator upon any compulsory reference under this act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court.

Power to Judge to direct Arbitration at time of Trial, when issues of fact left to his Decision.

VI. If upon the trial of any issue of fact by a judge under this Act it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the court, [or, in country causes, to a judge of any county court, (*h*)] upon such terms as to costs, and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; (*i*) and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings before and Power of such Arbitrator.

VII. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order.

Power to send back to Arbitrator.

VIII. In any case where reference shall be made to arbitration as aforesaid the court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the re-consideration and re-determination of the

(*h*) 21 & 22 Vict., c. 74, s. 5, repeals so much of this Act as enables the judge to refer a cause to a county court judge.

(*i*) See s. 3, *supra*.

said arbitrator, upon such terms, as to costs and otherwise, as to the said court or judge may seem proper.

Application to set aside the Award.

IX. All applications to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

Enforcing of Awards within Period for setting them aside.

X. Any award made on a compulsory reference under this Act may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

XI. If action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings.

XII. On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.

XIII. When reference is to two arbitrators, and one party fail to appoint, the other party may appoint arbitrator to act alone.

XIV. Two arbitrators may appoint umpire.

Award to be made in Three Months, unless Parties or Court enlarge time.

XV. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the superior court of which such submission, document, or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have

delivered to any party or to the umpire a notice in writing stating that they cannot agree.

XVI. *Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.*

XVII. *Agreement or submission in writing may be made rule of court, unless a contrary intention appear.*

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